

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 07-CR-816(RJD)

-against-

: United States Courthouse
: Brooklyn, New York

WAHIDULLAH HOSSAINI,

: November 12, 2008
: 9:30 a.m.

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE RAYMOND J. DEARIE
UNITED STATES CHIEF DISTRICT JUDGE, and jury

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1 (Open court.)

2 (Judge Dearie takes the bench.)

3 (The following occurred outside the presence of the
4 jury.)

5 THE COURT: Let me give you a report. We're missing
6 one juror, unfortunately.

7 Today we're going to stop at four o'clock. So we're
8 going to sit two to four without a break. We have an
9 induction of Judge Matsumoto this afternoon.

10 MR. BACHNER: Your Honor, good morning.

11 Could I just discuss two issues with the Court?

12 THE COURT: Sure. Come on up.

13 MR. BACHNER: I'd rather do it on the record, if
14 that's okay.

15 THE COURT: It's always on the record.

16 MR. BACHNER: I thought you said come on up.

17 THE COURT: I meant here. I want to be able to hear
18 you.

19 MR. BACHNER: I thought you meant to sidebar. I
20 apologize.

21 One, your Honor, has to do with the suppression
22 hearing that we had. On Friday night, I was given over a
23 thousand pages of 3500 material, and it was quite an effort to
24 go through. It took me about 15 hours just to read it.

25 Amongst the 3500 material was --

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1 THE COURT: 3500 material for what witness?

2 MR. BACHNER: All the witnesses.

3 MS. RASULO: For all of them, judge.

4 MR. BACHNER: I agree.

5 Amongst that 3500 material was information which was
6 not given to me at the suppression hearing, which I believe
7 would have directly impacted or could have impacted on your
8 Honor's decision.

9 For example, during the testimony of Agent
10 Jaramillo, she testified that this audit that they had done,
11 they had went and they had asked for Dr. Iandoli's script as
12 part of an audit. In fact, 3500 material not given to me
13 indicated that, in fact, she was directed by the assistant
14 district attorney in Special Narcotics to get those scripts.
15 That is why she went there. That's why she asked for those
16 scripts, and this was not just part of the routine audit. It
17 was a direct instruction as part of the criminal investigation
18 to get those scripts. I didn't know that.

19 There was also just a considerable amount of other
20 just 3500 material for Agent Jaramillo that I didn't get for
21 the first time, but that concerned me most because it went to
22 the issue at hand, which is was this a pretextual type of
23 audit; was it an audit at all. And I think the Court, whether
24 it would have impacted on your Honor's decision, I don't know,
25 but, certainly, I would have gone into it. I may have called

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1 the assistant district attorney as a witness to talk about
2 what would have occurred, et cetera, but it was clear that
3 that was the reason that that had occurred.

4 I have the 3500 material here for your Honor, and
5 I'm going to --

6 THE COURT: I have no reason to doubt your
7 representation.

8 MR. BACHNER: I'm going to put in a letter to the
9 Court.

10 THE COURT: If I think it's appropriate, and we may
11 very well, we'll reopen the record on the suppression issue.

12 MR. BACHNER: Thank you, your Honor.

13 The other issue is Miss Rasulo's been under an
14 enormous amount of logistical issues in this case, and I
15 appreciate that. Dealing with doctors is not easy to do, and
16 she's been as accommodating as she can be, and I appreciate
17 that, and I think getting me all the 3500 materials so late
18 was not because she was trying to do anything inappropriate.
19 I think she got a lot of it late, and it was an extremely
20 difficult thing for her to get together, and we're all big
21 boys and girls, and I understand that.

22 Last night Miss Rasulo was kind enough to advise me
23 that her case is going to be going in quicker than she
24 suspected and she may actually rest at the end of the day or
25 tomorrow morning.

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1 THE COURT: What happened to two weeks?

2 MR. BACHNER: I don't know, and of course that puts
3 a little bit of a kink, and she was kind enough to give me at
4 least that heads-up, and I didn't feel I was ambushed, and I
5 appreciate that.

6 Needless to say, we were thinking about putting in
7 our case, if we have a case, and we expect to have some case,
8 next week. I'm trying to now get it all together to do it
9 tomorrow or Friday, and I just don't know if I'm going to be
10 physically able to do that. I was on the phone last night
11 with the witnesses, on the phone this morning with the
12 witnesses.

13 THE COURT: Look, I understand your problem. You do
14 the best you can. If you need time, ask me for time.

15 MR. BACHNER: And just finally, I know it's been
16 difficult for Miss Rasulo as well to logistically know who's
17 coming next and who's coming as witnesses, and she's been
18 trying to work with me on that, but if we can just have some
19 understanding - I've tried to work this out with Miss Rasulo,
20 it hasn't worked out that well - just to have a sense today
21 who's the next -- there's supposed to be twelve witnesses
22 today. Just who's coming and what order they are just so I
23 can try and get my act together.

24 THE COURT: Sure. Pardon me for asking the obvious
25 question, have you asked her?

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1 MR. BACHNER: Yes. She told me no.

2 MS. RASULO: Well, basically, judge, the situation
3 is for me it's difficult -- I can tell him, like, for example,
4 we have our pharmacy expert who we flew in last night because
5 he was supposed to testify on Tuesday. We didn't know that
6 until late last night when he could arrive. Same thing with
7 our doctors; because a lot of them were supposed to testify on
8 Tuesday, their schedules are somewhat in a state of flux.

9 So it's difficult for me, in some senses, to tell
10 Mr. Bachner exactly who I'll be putting on and in what order.

11 THE COURT: That's fine. That's understandable.

12 MS. RASULO: So that's basically, I told him that a
13 witness that I had told him on Monday, Jennifer Zaltsman, who
14 we wouldn't get to on Monday, I intend to put on the stand
15 today. I have tried to be as forthcoming as I can with him
16 considering the logistical challenges that we're facing with
17 this case and the changing schedule and dealing with
18 professionals and experts and people who have commitments
19 elsewhere.

20 THE COURT: So it wasn't a no. It was "I'll tell
21 you as soon as I'm able to tell you."

22 MR. BACHNER: Well, this morning -- I don't want to
23 get into, like, playground stuff.

24 MS. RASULO: Judge, I can give him who I believe and
25 in what order.

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1 THE COURT: Who's next?

2 MS. RASULO: Well, Steve Loftus is currently on the
3 stand. We have a doctor, Dr. Pae. I had told him our next
4 witness was a doctor, and then after that, we intend to put
5 our pharmacy expert on the stand.

6 MR. BACHNER: Very good.

7 THE COURT: The doctor is somewhat inconsequential,
8 but the pharmacy expert and one of the users, one of the
9 immune witnesses, is coming in today?

10 MS. RASULO: Yes, that's our intention, judge.

11 THE COURT: Okay.

12 MR. BACHNER: Thanks, judge.

13 THE COURT: Sit and relax while we wait for our
14 juror.

15 So today I have to stop at four.

16 If I may inquire, why has this trial accelerated as
17 quickly as it has?

18 MS. RASULO: Your Honor, I guess part of the
19 situation is how many doctors one would call. We've
20 streamlined that, and we have a potential to call quite a few
21 doctors.

22 As Mr. Bachner knows, and what we've tried to do is
23 just streamline the case and put on the doctors that are, kind
24 of, the best representative example of our allegations. So I
25 think that's one way which we've streamlined. We're also just

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1 trying to, you know, not keep the jury too long, keep
2 everything really focused and put in our case.

3 THE COURT: If it would help you, and I'm sure Mr.
4 Bachner would not have any objection to this, if the doctors
5 are here and you want to interrupt a witness just to get them
6 on and off, I'd be amenable to that. I don't think Mr.
7 Bachner would have any strong objection.

8 MR. BACHNER: No problem, your Honor.

9 MS. RASULO: Thank you, judge. I appreciate that.

10 THE COURT: Off the record for a second.

11 (Pause in the proceedings.)

12 THE COURT: The juror in question is a woman from
13 Far Rockaway. I think it's juror number 8, but I'll confirm
14 that.

15 (Pause in the proceedings.)

16 MS. RASULO: Your Honor, I have a question with
17 respect to scheduling and something that you had said earlier
18 about if witnesses' schedules were becoming challenging.

19 Because of our late start today, I know we currently
20 have a diversion investigator on the stand. I have two
21 witnesses that need to leave by noon. The diversion
22 investigator can come in at any point.

23 THE COURT: Sure. Who are they?

24 MS. RASULO: It's the pharmacy expert and a doctor.

25 THE COURT: I don't know how long the pharmacy

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1 expert is going to be. How long is he going to be on direct?

2 MS. RASULO: Frankly, for me twenty minutes.

3 Then we have a doctor who needs to leave by eleven.

4 THE COURT: Apparently, there's some problems with
5 the Far Rockaway trains, which I understand is a two-fare
6 commute into Brooklyn. We could wait or we could consider
7 going without her. I won't go without her unless you both
8 agree.

9 We've confirmed it's juror number 8?

10 COURTROOM DEPUTY: We've confirmed it's juror number
11 8. Her name is Marlene Trammell.

12 MS. RASULO: Your Honor, the Government doesn't have
13 any objection to that.

14 THE COURT: How about you, sir?

15 MR. BACHNER: I'm sorry, your Honor. I was looking
16 at some documents. I didn't hear the question.

17 THE COURT: I said it's been reported to us by the
18 jury people downstairs that there's been problems with the Far
19 Rockaway trains. Although we haven't heard from this lady.

20 The other alternative is excuse her and substitute
21 alternate one, but I won't do it unless you both consent. The
22 Government has consented. The question is the defense's
23 position.

24 It is juror number 8, a woman who lives in Far
25 Rockaway. So give that some thought, and let me know your

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1 views.

2 (Pause in the proceedings.)

3 THE COURT: Have you made a determination?

4 MR. BACHNER: Your Honor, our preference is because
5 she's still on the train and she's not calling, probably
6 because she has no access to a telephone if she's on a train,
7 I'd like to give her a little bit more time and see if she can
8 come across.

9 THE COURT: We will, but I don't want to jeopardize
10 these witnesses.

11 MS. RASULO: That's the Government's concern, your
12 Honor.

13 (Pause in the proceedings.)

14 THE COURT: Unless there's some word, I think we'll
15 begin at 10:30, and we'll begin with that doctor and your
16 expert.

17 Fair enough?

18 MS. RASULO: Yes, judge.

19 MR. BACHNER: Fair enough.

20 (Pause in the proceedings.)

21 THE COURT: Any word at all?

22 COURTROOM DEPUTY: No, nothing.

23 THE COURT: Okay. I'm prepared to proceed. Seat
24 alternate one.

25 COURTROOM DEPUTY: Alternate one will become juror

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1 number 8.

2 THE COURT: Bring your doctor in, please.

3 (Dr. Robert Pae enters the courtroom and takes the
4 witness stand.)

5 THE COURT: Good morning, doctor. Sorry to keep you
6 waiting. We have a tardy, and now missing, juror, but we're
7 ready to start.

8 Just so you'll hold lawyers in high esteem, you
9 should know that counsel agreed to take you out of order, Mr.
10 Bachner, so we can get new and out.

11 DR. PAE: Thank you.

12 (Pause in the proceedings.)
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25

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1 COURTROOM DEPUTY: All rise.

2

3 (Jury enters the courtroom.)

4

5 THE COURT: Ladies and gentlemen, good morning. I'm
6 so sorry to have kept you waiting. We haven't worked that
7 long enough, but you'll soon find out how much I hate to keep
8 juries, or anybody else for that matter, waiting.

9 We are going to interrupt the testimony of Mr.

10 Loftus, who was on the stand when we broke on Monday, as a
11 courtesy to this gentleman.

12 I'd ask you to introduce your witness, Miss Rasulo.

13 MS. RASULO: The Government calls Dr. Robert Pae.

14 THE COURT: Swear the witness.

15 COURTROOM DEPUTY: Doctor, please stand and raise
16 your right hand.

17

18 DR. ROBERT PAE,

19 called by the Government, having been first duly
20 sworn, was examined and testified as follows:

21

22 COURTROOM DEPUTY: Please have a seat.

23 State and spell your name for the record.

24 THE WITNESS: Dr. Robert Pae, that's P-A-E.

25 THE COURT: You may inquire.

Dr. Pae - Rasulo / Direct

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1 DIRECT EXAMINATION

2 BY MS. RASULO:

3 Q Good morning, Dr. Pae.

4 A Good morning.

5 Q What kind of medicine do you practice?

6 A Orthopedic surgery.

7 Q How long have you been practicing for?

8 A About nine-and-a-half years.

9 Q Where do you practice?

10 A I practice in both Manhattan and as well as Brooklyn.

11 Q Where were you practicing in 2005?

12 A At the same places, at St. Vincent's Hospital in
13 Manhattan and at Kingsbrook Jewish in Brooklyn.

14 Q Do you prescribe hydrocodone as part of your practice?

15 A Yes.

16 Q How often do you prescribe it?

17 A Many times a week.

18 THE COURT: I'm sorry, many times a week?

19 THE WITNESS: Yeah, many times a week.

20 BY MS. RASULO:

21 Q Can you generally describe your prescribing practices
22 with respect to hydrocodone?

23 A I typically will write the prescription as Vicodin, which
24 is a tradename, which is a combination of hydrocodone and
25 Tylenol, and I will typically prescribe 30 or 40 tablets at a

Dr. Pae - Rasulo / Direct

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1 time.

2 Q What about the drug called Norco?

3 A Norco is hydrocodone, but it's a different tradename, and
4 I do not typically use Norco as -- in fact, I've not
5 prescribed Norco since I've been in practice.

6 Q Have you ever had prescriptions stolen?

7 A Yes.

8 Q Can you describe that experience?

9 A Well, I've had starting in approximately, I think, 2004
10 or so, there was a former patient of mine who altered
11 prescriptions, and my office had to deal with multiple phone
12 calls from pharmacists asking for confirmation of the
13 particular prescriptions, as they did not fit my standard
14 pattern.

15 Q And your office received phone calls from pharmacists to
16 confirm those prescriptions?

17 A Yes.

18 MS. RASULO: Permission to approach, your Honor.

19 THE COURT: Go right ahead.

20 Q I'm showing you what's been marked for identification as
21 Government Exhibit 16N.

22 (Hanging.)

23 Doctor, if you can review these prescriptions. Then
24 let me know when you're finished.

25 A (Perusing document.)

Dr. Pae - Rasulo / Direct

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1 THE COURT: How many in 16N?

2 THE WITNESS: Twelve.

3 BY MS. RASULO:

4 Q Now, doctor, the prescriptions in Government Exhibit 16N,
5 did you write these prescriptions?

6 A Not as far as I can tell, no.

7 Q The prescriptions in 16N, do these contain your
8 handwriting?

9 A No, they do not look like my handwriting.

10 Q Do you recognize any of the -- it looks like it's the
11 same patient, Robert Kim throughout?

12 A No. I did a check of our office records, and I have not
13 had a patient Robert Kim in the last ten years.

14 Q I'm going to show you one prescription in particular.

15 THE COURT: Have you offered these in evidence yet?

16 MS. RASULO: No. I'm sorry, judge.

17 THE COURT: Do you have any objection?

18 MR. BACHNER: No, your Honor.

19 THE COURT: 16N in evidence.

20 MS. RASULO: Subject to connection. Thank you, your
21 Honor.

22 (Government's Exhibit 16N was received in evidence.)

23 (The above-referred to exhibit was published to the
24 jury.)

25

Dr. Pae - Rasulo / Direct

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1 BY MS. RASULO:

2 Q I'm showing you the first prescription in 16N.

3 The prescription at the top says "Okay to fill
4 early."

5 Do you see that?

6 A Yes.

7 Q Dr. Pae, did you authorize this prescription to be filled
8 early?

9 A I have no recollection that I did so, no.

10 Q I'm going to show you the back of this prescription. It
11 appears to say "Okay by MD to fill 13 days early."

12 Dr. Pae, do you recall ever receiving any kind of a
13 phone call with respect to this prescription?

14 A No.

15 Q Do you recall ever approving the prescription to be
16 filled 13 days early?

17 A Not in this particular case, no.

18 THE COURT: What does that mean, early?

19 THE WITNESS: Well, sometimes a pharmacist will
20 confirm that the prescription was truly written, because the
21 amount of medication taken would suggest that they're either
22 they're taking too much or something else is happening to the
23 medication.

24 So occasionally, my office will get a call from a
25 pharmacist saying, "Do you realize that a prescription was

Dr. Pae - Bachner / Cross

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1 filled a week ago for a hundred tablets or 50 tablets?" And
2 say, "Well, we have another prescription. Did you write this
3 and did you really mean to write this?"

4 THE COURT: Okay.

5 MS. RASULO: I have no further questions for this
6 witness.

7 THE COURT: All right. Mr. Bachner.

8 CROSS-EXAMINATION

9 BY MR. BACHNER:

10 Q Good morning, doctor. How are you, sir?

11 A Good morning.

12 Q Doctor, you have two offices you work out of; one in
13 Manhattan and one in Brooklyn; is that right?

14 A Correct.

15 Q Are you part of a group in those offices?

16 A Yes.

17 Q How many doctors work in each office?

18 A In my Brooklyn office, I do believe there are five of us
19 that share space, and in the Manhattan office, there are nine
20 that share space.

21 Q How many office managers are there in each office?

22 A There is one office manager in each office.

23 Q Is part of the function of that office manager to handle
24 phone calls from pharmacists?

25 A Typically, all pharmacy calls will go to the individual

1 secretaries for the various doctors.

2 Q So if a pharmacist were to call from Duane Reade with a
3 question regarding a script, it would then be funneled, for
4 you, sir, it would then be funneled to your individual
5 secretary; is that right?

6 A Correct.

7 Q And if the secretary was asked to confirm the accuracy of
8 a script, and in as much as you are an orthopedic surgeon I'm
9 going to assume you also do surgery, if you were in surgery,
10 what would the secretary do?

11 A They would typically leave a message that the pharmacist
12 had called, and if I was unavailable and they needed urgent
13 confirmation, then they would typically talk to whichever
14 physician was covering for the group at that time.

15 Q Would your office manager or secretary ever access
16 information on your database to see whether Robert Kim, for
17 example, was a patient of yours?

18 A Yes. They would typically look in the system and look
19 for the last note or the chart or something like that, yes.

20 Q Does your office manager have --

21 MR. BACHNER: Withdrawn.

22 Q Do you know whether or not your office manager has ever,
23 pursuant either to your direction or not, given a pharmacist,
24 based upon her review of office records, a yes or a no
25 confirming the fact that a patient is or is not a patient?

Dr. Pae - Bachner / Cross

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1 A Specifically, I mean, I can't recall a specific patient,
2 but yes, they have, under my orders, said yes, that this
3 patient is mine or that we've treated this patient.

4 MR. BACHNER: Your Honor, could I just have one
5 minute?

6 (Pause in the proceedings.)

7 BY MR. BACHNER:

8 Q Doctor, do you know whether or not, at the times you had
9 filled out prescriptions, whether or not -- do you know as a
10 practitioner, sir, whether or not you have an obligation to
11 fill in the address of a patient on a controlled substance
12 Schedule III?

13 THE COURT: Meaning on the prescription?

14 MR. BACHNER: Yes, your Honor.

15 A I have to say I'm not a hundred percent sure whether that
16 is a legal obligation or not.

17 Q And is it fair to say, sir, at times you have filled out
18 prescriptions without an address?

19 A Yes.

20 Q Doctor, if you fill out a script for a hundred
21 hydrocodone pills and the patient -- is it fair to say the
22 patient has the right, when he goes to a pharmacist, based
23 upon your understanding, to fill only part of that script if
24 he, for example, is unable to pay for the full script?

25 A I'm, actually, not sure as to whether or not it's within

Dr. Pae - Bachner / Cross

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1 their right or not.

2 Q Now, sir, you did have a patient named Robert Kim about
3 ten years ago, you said?

4 A No. I have done a check of records, and I do not have a
5 patient in the entire system under Robert Kim in the last ten
6 years of practice.

7 Q I'm sorry. I thought you meant you had a Robert Kim ten
8 years ago. I'm sorry.

9 Now, sir, when the assistant asked you if this was
10 your handwriting, you seemed somewhat -- you weren't giving a
11 definite on that.

12 Is it definitely not your handwriting or looking at
13 it you're just not sure?

14 A It looks nothing like my handwriting.

15 Q Fair enough.

16 MR. BACHNER: That's all. Thank you, your Honor.

17 THE COURT: Thank you.

18 Anything else, Miss Rasulo?

19 MS. RASULO: No, your Honor.

20 THE COURT: Dr. Pae, thank you, very much. You're
21 excused.

22 (The witness leaves the witness stand.)

23 THE COURT: Next witness.

24 MS. RASULO: The Government calls Carmen Catizone to
25 the stand.

C. Catizone - Rasulo / Direct

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1 THE COURT: Obviously another witness we're taking
2 out of order for scheduling issues. Then we'll get back to
3 Mr. Loftus.

4 (Carmen Catizone enters the courtroom and takes the
5 witness stand.)

6 COURTROOM DEPUTY: Sir, please raise your right
7 hand.

8
9 CARMEN CATIZONE,
10 called by the Government, having been first duly
11 sworn, was examined and testified as follows:

12
13 COURTROOM DEPUTY: Please have a seat.
14 State and spell your name for the record.

15 THE WITNESS: Carmen Catizone, C-A-R-M-E-N
16 C-A-T-I-Z-O-N-O.

17 THE COURT: Please inquire.

18 DIRECT EXAMINATION

19 BY MS. RASULO:

20 Q What is your profession, Mr. Catizone?

21 A I'm a pharmacist.

22 Q How long have you been a pharmacist for?

23 A I've been a pharmacist for 26 years.

24 Q How does one become a pharmacist?

25 A In order to be licensed as a pharmacist, you have to go

C. Catizone - Rasulo / Direct

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1 through a formal education program that consists of five to
2 six years. You have to go through an experiential program
3 where you actually work in a pharmacy under the guidance of a
4 pharmacist, and then you have to pass a law examination for
5 the states in which you are going to practice, and you have to
6 pass a national licensure exam that determines whether you're
7 competent enough to practice.

8 Q And you yourself fulfilled all those responsibilities or
9 obligations to become a pharmacist?

10 A Yes, I did.

11 Q Where did you obtain your degree?

12 A University of Illinois in Chicago.

13 Q What types of classes did you take?

14 A I took classes in biology, chemistry, anatomy, how drugs
15 react in the body, courses on law and courses on ethics and
16 courses on how to practice pharmacy.

17 Q What did you do after you graduated?

18 A I worked at a chain pharmacy in a retail setting, as well
19 as a hospital pharmacy.

20 Q Where are you currently working?

21 A I work for the National Association of Boards of
22 Pharmacy.

23 Q And what is the National Association of Boards of
24 Pharmacy?

25 A It's the organization that represents all of the state

C. Catizone - Rasulo / Direct

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1 agencies that license and regulate pharmacists and pharmacies.
2 Only state agencies can be members. Individual pharmacists or
3 corporations or pharmacies are not members, just state
4 agencies.

5 Q Is the profession of pharmacy regulated by any body or
6 entity?

7 A It's regulated directly by the individual state board of
8 pharmacy. So in the case of this state, it would be the New
9 York Board of Pharmacy, and that also falls under the
10 regulations of the Food and Drug Administration and the Drug
11 Enforcement Agency.

12 Q How long have you been working at the National
13 Association of Boards of Pharmacy?

14 A Since 1985.

15 Q And you started approximately 23 years ago?

16 A Approximately, yes.

17 Q What is your current position at the National Association
18 of Boards of Pharmacy?

19 A I'm the executive director or the chief executive
20 officer.

21 Q How long have you held --

22 MS. RASULO: Strike that.

23 Q Have you held any other positions there?

24 A When I was first employed, I was a test and measurements
25 director, and then in 1988, I became the executive director.

C. Catizone - Rasulo / Direct

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1 Q How were you selected for your current position?

2 A There was a national search across the country.
3 Qualifications required a pharmacist with experience in
4 pharmacy law and pharmacy practice and a pharmacist that held
5 an advanced degree.

6 Q What are your responsibilities currently?

7 A I oversee the operations of the association on a
8 day-to-day basis and implement of policies and directions that
9 the states have dictated to us, as well as insuring that our
10 competency assessment exams and other programs are meeting the
11 state requirements.

12 Q Through your training and experience, have you developed
13 an expertise in the area of pharmacies dispensing controlled
14 substances?

15 A Yes.

16 Q How have you gained that experience?

17 A Through my research and work on a daily basis with state
18 laws and federal laws regarding controlled substances, with my
19 appointment to various committees of the DEA and the states
20 regarding controlled substances, and with my practice
21 experience in dispensing controlled substances.

22 Q What about the New York State Board of Pharmacy
23 requirements for pharmacists dispensing controlled substances,
24 are you familiar with those?

25 A Yes.

C. Catizone - Rasulo / Direct

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1 Q Have you given presentations on the topic of dispensing
2 controlled substances?

3 A Yes.

4 Q Have you spoken on national T.V. and radio with respect
5 to the topic?

6 A Yes.

7 Q Have you ever testified at the request of the DEA
8 regarding topics such as pharmacies dispensing controlled
9 substances?

10 A Yes.

11 Q Can you describe a little bit more about that?

12 A The DEA has called upon me to testify or give comments on
13 various topics that they were considering. For example, when
14 they were considering computer regulations for pharmacies,
15 they asked for my expert opinion. When they were looking at
16 whether or not you can electronically transmit prescriptions
17 via computer or hand-held device, again they requested our
18 opinion, and when they also sought guidance on whether or not
19 particular products should be changed in the schedule from a
20 more strict position that they currently held, again they
21 turned to us for comments.

22 Q Now, have you ever testified as an expert witness in
23 federal court regarding pharmacies dispensing controlled
24 substances?

25 A Yes.

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1 Q Approximately how many times?

2 A Four times.

3 Q And in what states?

4 A Minnesota, Maryland, New York. I can't recall the fourth
5 one at this time, sorry.

6 Q Now, have you testified in state court as an expert?

7 A Yes.

8 Q Which states?

9 A I've testified in all states but Alaska.

10 MS. RASULO: Your Honor, at this time, the
11 Government requests that the witness be qualified to testify
12 as an expert in the areas of pharmacies dispensing controlled
13 substances, pharmacy regulations and practice.

14 THE COURT: Mr. Bachner, do you wish to inquire at
15 this time?

16 MR. BACHNER: No, your Honor.

17 THE COURT: All right. Ladies and gentlemen, this
18 witness is a little different from a regular witness. Most
19 witnesses come in here and tell you what they've seen, what
20 they've heard, so forth and so on.

21 There are certain witnesses commonly referred to as
22 either expert witnesses or, as I prefer to call them, opinion
23 witnesses because they, unlike most witnesses, are permitted,
24 by virtue of their training and experience, to offer opinions
25 that may be relevant to the issues on trial and may be helpful

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1 to you, the triers of the fact.

2 I want you to understand, as I will explain in my
3 final instructions to you, that even though we might identify
4 this gentleman as an expert or an opinion witness, any issue
5 of fact is for you to determine, and I will have some
6 instructions for you. Just because we hear from an expert
7 doesn't mean that his opinion is, in any sense of the word,
8 binding on you. If you feel that the opinion is not
9 consistent with the evidence or if you feel that his
10 experience and training does not support the opinions, you're
11 free to disregard them, and I will remind you about that in my
12 final instructions. So just bear that in mind.

13 Please proceed.

14 MS. RASULO: Thank you.

15 BY MS. RASULO:

16 Q Mr. Catizone, what kind of training do pharmacists
17 receive regarding dispensing controlled substances?

18 A Dispensing controlled substances is a part of all of the
19 classes and the curriculum that a pharmacist has to learn
20 because it is one of the main areas that a pharmacist is
21 tested on before they're issued a license.

22 Q What kind of training, if you can elaborate more?

23 A There will be real-life situations that the pharmacist
24 will simulate in their training where they'll have to know the
25 laws on controlled substances, know how to deal with those

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1 situations, and they will be tested in their courses on
2 recordkeeping, how to maintain those products, how to detect
3 fraud, and what they should do when they encounter fraudulent
4 prescriptions.

5 Q As a pharmacist, are you required to have knowledge of
6 prescription medication?

7 A Yes, you are.

8 Q Why is that?

9 A There are two reasons for that. One, the pharmacist
10 serves as a safety net for the patient. They're to make sure
11 that the medication was legitimate for that patient, written
12 by a doctor that had the authority to do so, and was operating
13 within their scope of practice so that we don't have
14 podiatrists, or foot doctors, writing prescriptions for
15 patients outside of their scope, maybe heart medications or
16 diabetes medications, and as well as looking out for the
17 patient in terms of their interactions or allergies or other
18 medications they're taking.

19 The second responsibility is to make sure that it's
20 a legitimate prescription and that fraud isn't occurring, or
21 that the patient isn't diverting drugs or trying to obtain
22 drugs that they shouldn't have for illegal purposes.

23 Q Now, what is the difference between controlled and a
24 non-controlled substance?

25 A A controlled substance is termed "controlled" because it

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1 has very addictive properties, it is much more dangerous than
2 a prescription drug and needs to be more tightly managed and
3 controlled.

4 Q Now, have you been asked about specific controlled
5 substances with respect to this case?

6 A Yes.

7 Q Which ones?

8 A Hydrocodone and also the hydrocodone compounds that are
9 commonly known as Vicodin.

10 Q And any other?

11 A There are other pain medications that I've looked at
12 along the same lines in the same classes and schedules.

13 Q How about with respect to oxycodone?

14 A Oxycodone is a hydrocodone product, yes.

15 Q What is the maximum supply of controlled substance that a
16 pharmacist can dispense in one day?

17 A That varies from state to state, but in New York state, a
18 pharmacist can only dispense a 30-day supply of OxyContin
19 because it's a very tightly controlled drug. If there is a
20 special designation for a condition that would warrant more
21 than a 30-day supply, the maximum supply is 90 days, and that
22 has to be specifically documented by the doctor as well as by
23 the pharmacist.

24 Q Now, what are the requirements for pharmacists to insure
25 that prescriptions are -- that they're filling are valid?

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1 A One, they have to make sure that the doctor is actually
2 licensed in the state where they're practicing and that the
3 doctor is practicing appropriately. So they need to validate
4 that either through their own experiences with the doctor,
5 somebody that's in the area of the pharmacy or somebody they
6 interact with and know that that person practices. If they
7 don't have that firsthand knowledge, they have to check to see
8 if they're licensed and also have to verify what their scope
9 of practice is.

10 If they suspect any fraud with that prescription or
11 that the prescription is invalid, they have a legal
12 responsibility to investigate that and, if they find fraud,
13 not dispense the prescription and notify authorities that
14 fraud's occurring.

15 MR. BACHNER: Your Honor, can we have a brief
16 sidebar?

17 THE COURT: Yes, of course.

18 (Sidebar.)

19 (Continued on next page.)
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1 (Side-bar conference held on the record out of the
2 hearing of the jury.)

3 MR. BACHNER: Your Honor, whenever there's an expert
4 on the stand, I get concerned about the expert giving
5 testimony about what he believes legal requirements are.

6 These are regulatory requirements put down by the
7 state board, and I wouldn't want the jury to get confused
8 about his testifying to ultimate conclusions, which is that
9 somehow Mr. Hossaini has broken some type of law by allegedly
10 not checking a doctor's name, et cetera. I want the jury to
11 understand that whatever the laws are in connection with this
12 case, that your Honor is going to instruct them as to that.

13 That there's no statute, that I'm aware of, a
14 criminal statute, for example, that says a pharmacist must
15 check a prescription for a doctor, et cetera. I just don't
16 want them to get confused as far as that.

17 THE COURT: Would you like me to instruct them?

18 MR. BACHNER: I'd like you to just tell the jury
19 that Dr. Catizone is giving his opinion as to pharmaceutical
20 regulations and that you, however, will tell them what the law
21 is at the end of the case.

22 MS. RASULO: With respect to the criminal statute,
23 that's fine, but he's not opining to the ultimate issue of the
24 criminality.

25 THE COURT: It's all part of the circumstantial case

Sidebar

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1 you're trying to build, but keep away from Dr. Hossaini. Keep
2 this testimony away from this defendant.

3 MS. RASULO: Yes, your Honor.

4 THE COURT: Keeping it generic.

5 MS. RASULO: Yes, absolutely.

6 THE COURT: Thank you.

7 MR. BACHNER: Thanks, judge.

8 (Sidebar end.)

9 (Continued on following page.)

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1 (In open court.)

2 THE COURT: I just want to take a moment to
3 emphasize a point that I think bears mention at this stage in
4 light of the testimony we're listening to.

5 This witness is offering his opinion about certain
6 regulations that control the pharmacists and the daily
7 business of running a pharmacy and dispensing medications.

8 This case that we have before us is about specific
9 criminal charges that have very specific elements that I will
10 explain to you and, of course, which the Government must prove
11 each of them beyond a reasonable doubt. Separate and apart
12 from whatever regulatory controls are on the pharmacist, this
13 case is not about regulatory controls. It's about specific
14 criminal acts or alleged criminal acts, the elements of which
15 the Government must prove, and I will explain those to you
16 precisely at the conclusion of the case. So please bear that
17 in mind.

18 Mr. Bachner, satisfactory?

19 MR. BACHNER: I think from both sides, your Honor.

20 THE COURT: Thank you.

21 Miss Rasulo?

22 BY MS. RASULO:

23 Q Mr. Catizone, in your experience --

24 THE COURT: There being no answer, is that
25 satisfactory?

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1 MS. RASULO: Yes, your Honor.

2 THE COURT: Thank you. Go ahead.

3 BY MS. RASULO:

4 Q Mr. Catizone, in your experience, if a pharmacist can't
5 verify a prescription, what should he or she do?

6 A If it's a prescription for a non-controlled substance,
7 they should contact the doctor and wait for that verification.
8 If it's a prescription for a controlled substance, the burden
9 to do so is even stronger, but the same result is expected.
10 They must contact that doctor before filling that
11 prescription.

12 Q Now, if the pharmacist is suspicious of a customer, what
13 should he or she do?

14 A One, they need to investigate their suspicions and
15 determine if those suspicions are justified.

16 MR. BACHNER: Your Honor, objection as to the
17 vagueness, suspicious of the customer.

18 THE COURT: I'll permit it.

19 If there's something about the prescription that's
20 presented to the pharmacist that gives him or her reason to
21 wonder whether it's legitimate?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay. Go ahead.

24 A The pharmacist needs to investigate those suspicions and
25 determine if they are justified. If they are justified, for

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1 instance, if the prescription is a fraudulent prescription or
2 the patient is doctor shopping trying to obtain controlled
3 substances from a number of pharmacies and doctors, then the
4 pharmacist should not fill that prescription and has a
5 responsibility to notify authorities.

6 Q Again, if a pharmacist feels threatened or uncomfortable,
7 made to feel that way by a customer, is the pharmacist taught
8 to do anything in particular?

9 A The pharmacist is taught, in those situations, to work
10 with authorities to have that patient arrested and to minimize
11 the situation for the patient receiving drugs illegally and
12 also endangering the pharmacist by filling the prescription or
13 doing something that would cause that patient or the customer
14 to become more angry. The first recommendation is always to
15 get involved with local authorities.

16 Q What about advancing pills on a prescription for
17 hydrocodone or oxycodone, meaning to, basically, give some
18 pills up front before a valid prescription follows?

19 A That is a direct violation of state and federal law.
20 It's just simply illegal to do so.

21 Q What about giving pills of oxycodone or hydrocodone to a
22 customer without a prescription at all, there's no valid
23 prescription coming in at any point as far as the pharmacist
24 knows?

25 A Once again, that's a direct violation of state law. It's

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1 clearly illegal and not allowed.

2 MR. BACHNER: Your Honor, same objection as before.

3 THE COURT: Overruled.

4 Go ahead.

5 Understand, this witness is giving general
6 testimony, general background information. He's not
7 commenting upon any of the information you've heard before
8 with respect to prescriptions. This is general background
9 information that may or may not assist you as the trier of the
10 fact.

11 Go ahead.

12 BY MS. RASULO:

13 Q Can you explain a little bit more, I think you referred
14 to the term "doctor shopping."

15 Can you explain what that means to the jury?

16 A Sure. It's a situation that pharmacists are made aware
17 of in their education, as well as to information that's
18 provided by the DEA, and what that means is a patient will go
19 to different doctors, either faking an illness or having an
20 illness, but trying to obtain medications that shouldn't be
21 prescribed for that person. Either they're going to turn
22 around and sell those prescriptions, or they're going to just
23 amass a quantity of prescriptions or controlled substances
24 that they shouldn't be taking because they're addicted to the
25 medication or there's some other reason not legitimate that

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1 they're trying to obtain those medicines.

2 Q Now, are there any requirements of pharmacists that are
3 facing multiple prescriptions for the same doctor in a given
4 day for a different patient with respect to controlled
5 substances in particular?

6 A Again, the pharmacist has that responsibility to insure
7 that fraud isn't occurring, that patients aren't being injured
8 by obtaining controlled substances they shouldn't. So these
9 types of situations are all red flags that the pharmacist must
10 investigate.

11 If they see a number of prescriptions from the same
12 doctor for the same medications for the same patients or for
13 different patients, the pharmacist has an obligation and
14 responsibility to investigate those prescriptions before they
15 dispense them.

16 Q Now, are there any requirements of pharmacists or
17 responsibilities that pharmacists have if they notice the
18 customer is noticeably addicted to a controlled substance?

19 A Again, if a pharmacist notices something that's injurious
20 to the patient, that would cause the patient harm, if they
21 suspect the patient is addicted and the patient has a
22 prescription for a controlled substance which is going to then
23 harm the patient by furthering that addiction and maybe
24 causing that patient serious harm, they have a legal
25 responsibility not to dispense that prescription and to

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1 contact authorities or contact that patient's doctor and let
2 them know what's happening.

3 Q In your experience at the national -- what was it again?

4 A Association of Boards of Pharmacy.

5 Q Association of Boards of Pharmacy, is there, in your
6 experience, an average number of prescriptions that are filled
7 a day at pharmacies nationwide?

8 A There are national studies published by the National
9 Association of Chain Drug Stores and information management
10 services, and they estimate that the average number of
11 prescriptions that a pharmacy fills is between 150 to 200
12 prescriptions per day.

13 Q And what if the pharmacy is near a hospital or in a large
14 city, next to a hospital or a treatment facility?

15 A Those pharmacies will typically fill more prescriptions,
16 maybe 500, maybe a thousand prescriptions per day.

17 Q What is required for a board of pharmacy to revoke a
18 license?

19 A Sometimes the board of pharmacy can revoke it immediately
20 if there's a clear and imminent danger to the public health.
21 If that condition doesn't exist, what the board of pharmacy
22 will do is investigate the situation and then afford that
23 pharmacy the opportunity to go through due process, to present
24 their side of the story and for the board of pharmacy then to
25 make a determination whether or not a crime has been committed

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1 or whether or not a regulation has been violated.

2 What often happens when there's, sort of, two
3 jurisdictions approaching this, where there may be a federal
4 case going on where the FDA or DEA or U.S. Attorney is
5 investigating a pharmacy, the board of pharmacy will step back
6 and open a file and wait to see what happens in those
7 proceedings before taking action.

8 Q Now, are pharmacists allowed to alter prescriptions
9 without the permission of doctors?

10 A They're not allowed to do that under the law. They would
11 be practicing without a license and would be subject to those
12 fines and penalties.

13 Q Now, does a pharmacist always have to follow the
14 requirements for dispensing controlled substances --

15 THE COURT: I can't hear the end of your question.

16 Q Does a pharmacist always have to follow the requirements
17 that you've explained to the jury with respect to filling
18 controlled substances?

19 A They have to follow all the requirements, state and
20 federal, for controlled substances. If they don't do so, they
21 are violating federal and state law and could lose their
22 license, based upon the severity of those violations.

23 MS. RASULO: Thank you. I have no further
24 questions.

25 THE COURT: All right. Mr. Bachner.

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1 CROSS-EXAMINATION

2 BY MR. BACHNER:

3 Q Good morning, Mr. Catizone. How are you?

4 A Good morning. Fine, thank you.

5 Q Mr. Catizone, have you ever met the defendant, Michael
6 Hossaini?

7 A No, sir.

8 Q And in preparation for your testimony here today, did you
9 ask to meet with Mr. Hossaini?

10 A No, sir.

11 Q Now, sir, you were hired by the Government to offer your
12 opinion in this case; is that correct?

13 A Yes, sir.

14 Q Is it fair to say, sir, that you --

15 MR. BACHNER: Withdrawn.

16 Q Are you receiving any compensation?

17 A No, sir.

18 Q Is it fair to say that your hotels and your food are
19 being paid for, but you're not being paid hourly for your
20 time?

21 A Yes, sir.

22 Q Are you testifying here today as pursuant to your
23 position with the National Pharmaceutical Board?

24 A Yes, sir.

25 Q Now, sir, is it your position that the testimony that

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1 you're giving here today is in no way biased in support of the
2 Government?

3 A Yes, sir.

4 Q Now, sir, is it fair to say that you have never testified
5 on behalf of a respondent in a pharmaceutical civil licensing
6 action or on behalf of a defendant in a criminal case?

7 A No, sir.

8 Q It is fair to say that?

9 A No, it's not fair to say.

10 Q You've testified for a respondent in a civil action?

11 A In a licensing action, sir.

12 Q What was the name of that respondent?

13 A I don't recall. It was some time ago.

14 Q How many years ago?

15 A Probably about ten years ago.

16 Q How many times have you testified for a respondent, that
17 is a doctor or a pharmacist?

18 A For a pharmacist in board actions, numerous times.

19 Q Now, you've testified as an expert for the Government,
20 have you not?

21 A Yes, sir.

22 Q And you've testified for the Government as recently as a
23 week ago in another criminal matter; isn't that right?

24 A Yes, sir.

25 Q And you've testified for prosecutors in an action in

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1 Maryland; is that right?

2 A Yes, sir.

3 Q And an action in Minnesota; is that correct?

4 A Yes, sir.

5 Q Are there any other criminal actions you've testified for
6 on behalf of prosecutors?

7 A There was a case in California, sir.

8 Q Now, sir, were you also asked to testify in a case in
9 North Carolina for prosecutors?

10 A Yes, sir.

11 Q Is it fair to say that you were never required to testify
12 in that case? You prepared but were not called?

13 A The case may go to trial. So I'm still waiting for that
14 one, sir.

15 Q And is it also true, sir, that you have also rendered
16 opinions, submitted affidavits and rendered opinions to the
17 Drug Enforcement Administration in connection with licensing
18 actions?

19 A Yes, sir.

20 Q Now, sir, does the organization that you are on the board
21 of, the NABP, does it rely on the support of federal agencies
22 in order for you to get legislation passed that you're
23 interested in?

24 A No, sir.

25 Q So if you wanted to --

1 MR. BACHNER: Withdrawn.

2 Q Do you rely on the support of the Drug Enforcement
3 Administration, for example, in getting funding?

4 A No, sir.

5 Q Have you ever heard of something called VIPPS?

6 A Yes, sir.

7 Q What is VIPPS?

8 A VIPPS is an accreditation program that we manage that
9 certifies Internet pharmacies as operating legally and
10 legitimately.

11 Q Is your organization -- how is your organization involved
12 with VIPPS?

13 A We created VIPPS, and we actually manage VIPPS. It's one
14 of our programs that we offer to the states.

15 Q VIPPS is funded how?

16 A It's funded by the fees paid by the pharmacies seeking to
17 be accredited.

18 Q And in order for you to get accreditation through various
19 pharmacies, do you have to go through state agencies, et
20 cetera, and federal agencies?

21 A With our program, sir, no. We verify licensure with the
22 state agencies for the pharmacies and pharmacists and verify
23 that they're in compliance with federal laws, but we don't
24 have to work through the FDA or DEA to obtain that.

25 Q So your testimony here today is that your relationship --

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1 MR. BACHNER: Withdrawn.

2 Q You do have, on a personal level and as an expert, a
3 close relationship with the Drug Enforcement Administration;
4 isn't that correct?

5 A Yes, sir.

6 Q And do you have a close relationship with the Food and
7 Drug Administration; isn't that right?

8 A Yes, sir.

9 Q And is it your testimony, sir, that that close
10 relationship does not impact at all on your board or on the
11 licensing issues that you've testified to in connection with
12 VIPPS?

13 A Yes, sir.

14 Q It does not impact?

15 A It does not impact, sir.

16 Q Sir, in preparation for your testimony here today, were
17 you asked to speak with any patients involved in this action?

18 A No, sir.

19 Q Were you asked to review any prescriptions in this
20 action?

21 A Yes, sir.

22 Q You were?

23 A Yes, sir.

24 Q Sir, were you asked to review any of the grand jury
25 testimony in this case?

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1 A No, sir.

2 Q Have you reviewed the indictment in this case?

3 A Yes, sir.

4 Q Have you reviewed any reports issued by the Drug
5 Enforcement Administration?

6 A Undercover operations, yes, sir.

7 Q Did you review an undercover operation from February
8 of '07?

9 A Possibly. I'm not -- I can't remember offhand, but
10 probably so, sir.

11 MR. BACHNER: Your Honor, I'm just going to be
12 sifting through some questions that were covered by the
13 Government. So just bear with me one moment.

14 THE COURT: Take your time.

15 (Pause in the proceedings.)

16 BY MR. BACHNER:

17 Q Sir, I just want to understand a little bit more about
18 what the NABP is. So just bear with me for a moment.

19 The NABP, as I understand it, is a national
20 organization that brings various state boards of pharmacies
21 together; is that right?

22 A Yes, sir.

23 Q And it oversees, as I understand it, the administration
24 of the standardized examinations used by most states to
25 evaluate the competency of pharmacists; is that right?

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1 A Yes, we developed that exam and administer it.

2 Q And it serves as a forum for people to discuss policies
3 and legislation?

4 A The state agencies, yes.

5 Q Do you know someone named Robert Mangione?

6 A Yes, sir.

7 Q Who is Robert Mangione?

8 A I believe he's the dean at St. John's.

9 Q Do you have a personal relationship with him?

10 A Yes, sir.

11 Q Does the NABP that you are involved with also facilitate
12 communications between the states and the various disciplinary
13 matters?

14 A Yes, sir.

15 Q Is it also fair to say that the appointment to the board
16 is, essentially, a political gesture? Most members are
17 normally appointed by the Government, aren't they?

18 A Yes, sir.

19 Q And the NABP that you're a member of, it's not a state or
20 federal agency; isn't that right?

21 A Correct.

22 Q It can't make any laws; isn't that right?

23 A Correct.

24 Q It can't establish pharmacy guidelines on a federal
25 level; is that right?

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1 A Correct.

2 Q Or on a state level?

3 A Correct.

4 Q And it has no jurisdiction over pharmacies on a federal
5 level; isn't that right?

6 A Correct.

7 Q Or on a state level?

8 A Correct.

9 Q And it's not accredited by the state pharmaceutical
10 boards; isn't that correct, other than Illinois?

11 A No, sir, I'm not sure of the question because our exams
12 are required by all the states, but I'm not aware of the
13 states accrediting any organization.

14 Q So the NABP is not accredited by any state; is that
15 correct?

16 A Yes, sir.

17 Q And the NABP, the way it's held out is a non-for-profit
18 organization; is that right?

19 A Yes, sir.

20 Q And the various state boards of pharmacies, they have to
21 pay to belong to your non-for-profit; is that right?

22 A Yes, sir.

23 Q Can an individual pharmacist join the NABP?

24 A No, sir.

25 Q Now, the VIPPS matter we spoke about earlier.

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1 What does VIPPS stand for?

2 A It's the Verified Internet Pharmacy Practice Sites
3 program.

4 Q And what the function of that is is to regulate Internet
5 pharmacies; isn't that right?

6 A No. It's to distinguish between legal and legitimate
7 Internet pharmacies and those that may be operating illegally
8 or not legitimate.

9 Q And VIPPS is run solely by your organization; is that
10 right?

11 A Yes, sir.

12 Q And again, I think you said to be a member of VIPPS,
13 there's this licensing fee; is that right?

14 A Yes, sir.

15 Q How much is that fee?

16 A If it's just a single pharmacy, one operation, it's a
17 thousand dollars. If it's a pharmacy that may have multiple
18 locations, it's \$2,000, and if it's a pharmacy that has
19 multiple operations, call centers in different states or
20 distribution centers, that fee is \$3,000.

21 Q How many members do you presently have?

22 A Of NABP?

23 Q For VIPPS.

24 A There are 15 accredited sites representing eight to
25 12,000 pharmacies.

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1 Q Now, sir, you've heard the term "a brick and mortar
2 operation" for a pharmacy; is that right?

3 A Yes, sir.

4 Q And a brick and mortar operation, as distinguished from
5 an Internet organization, is kind of a mom-and-pop pharmacy
6 store or the actual brick and mortar place you can walk into
7 and fill your prescriptions; is that right?

8 A Yes, sir.

9 Q Now, you haven't been a practicing pharmacist for over 20
10 years; isn't that right?

11 A Actively practicing, yes.

12 Q I'm sorry?

13 A Yes.

14 Q So you haven't been behind the counter, for example,
15 filling prescriptions for at least 20 years; isn't that right?

16 A Yes, sir.

17 Q Have you ever owned a pharmacy?

18 A No, sir.

19 Q Sir, you've given a little bit of background about how
20 one becomes a pharmacist.

21 You have to take an exam to become a licensed
22 pharmacist; isn't that right?

23 A Yes, sir.

24 Q How many years of graduate school does that require?

25 A I'm not sure if it requires graduate school. It's a

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1 six-year program. In some states, it's considered a doctor or
2 pharmacy program, which would be a graduate-level program. In
3 other states, it's considered undergraduate program.

4 Q Do you know whether or not there are internship
5 requirements?

6 A Yes, there are.

7 Q What are those requirements?

8 A Generally, the states have a 1,500-hour internship
9 requirement, which is what they've agreed to as a uniform
10 standard across the country, which means they have to serve
11 1,500 hours in a pharmacy under the supervision of a licensed
12 pharmacist.

13 Q Does there have to be any demonstration of moral
14 character?

15 A Yes.

16 Q So to become a pharmacist, there has to actually be a
17 finding that the person is of good moral character and
18 reputation; isn't that right?

19 A A finding or an attestation by another pharmacist with
20 whom they've worked that says this person has good moral
21 character.

22 Q A pharmacist does more than just put pills in bottles;
23 isn't that right?

24 A Yes, sir.

25 Q They are trained to, have you ever heard the term

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1 "compounding of drugs"?

2 A Yes.

3 Q What does that mean?

4 A That means that the pharmacist actually takes raw
5 ingredients and mixes those ingredients together to form a
6 product.

7 Q So they actually create tablets, capsules, intravenous
8 medications, ointments, things of that nature; isn't that
9 correct?

10 A Yes, sir.

11 Q And is it also fair, sir, that pharmacists are also
12 taught on what the proper dosages are for various medications;
13 isn't that right?

14 A Yes, sir.

15 Q And the various effects the drugs will have on the human
16 body; isn't that right?

17 A Yes, sir.

18 Q And also what those effects might be in conjunction with
19 other pharmaceuticals; isn't that right?

20 A Yes, sir.

21 Q So if they get a script for one drug and then the doctor
22 writes them a script for another drug, if the pharmacist
23 believes that the effect together is a harmful one, he has a
24 right not to fill that script; is that correct?

25 A Yes, sir.

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1 Q Now, is it fair to say that if a pharmacist has a
2 difference of opinion with a physician over a particular
3 prescription, the opinion of the doctor will control; is that
4 right?

5 A No, sir.

6 Q If a pharmacist has no reason to believe that a
7 prescription written by a doctor is harmful to the patient,
8 but disagrees with the amount of the dosage, is it fair to say
9 that the doctor's opinion will control?

10 A No.

11 Q What should a pharmacist do in that circumstance?

12 A If the pharmacist believes that the dosage is
13 inappropriate for the patient, the pharmacist should refuse to
14 dispense that prescription and make sure that the patient's
15 informed of that and the doctor is also informed.

16 Q And that is not, in your opinion, the illegal practicing
17 of medicine?

18 A No, sir.

19 Q Overruling a doctor and telling a patient, "Don't listen
20 to your doctor, listen to me," that is not the illegal
21 practice of medicine?

22 A No, because the pharmacist is saying, "This is the wrong
23 medication," or, "It's inappropriate for you, it will harm you
24 and, therefore, I can't dispense it in your best interest."

25 Q Sir, if you recall my question, I didn't indicate that it

1 harmed the patient. There was a disagreement with the dosage.

2 A The disagreement though would have to be based upon
3 whether or not it was in the best interest of the patient. If
4 it wasn't in the best interest of the patient, then the
5 pharmacist should dispense the quantity.

6 Q Now, sir, is it fair to say that there has been a lot of
7 effort being put together by the pharmaceutical associations
8 and the medical associations to create a better working
9 relationship between doctors and pharmacies?

10 A Yes, sir.

11 Q And is it fair to say that one of the reasons for that is
12 that doctors frequently do not like having their judgment
13 questioned by pharmacists who call them up?

14 A Yes.

15 Q And is it fair to say also, sir, that, in your experience
16 in the 20 years as a pharmacist, that there are times when a
17 pharmacist will call up a doctor to speak to the doctor and
18 the pharmacist is routed to the doctor's office administrator?

19 A Yes, sir.

20 Q Now, is it also fair to say that the practice of pharmacy
21 is highly regulated?

22 A Yes, sir.

23 Q And it's also very transparent, isn't it?

24 A Yes, sir.

25 Q And what I mean by that is is that the drugs, controlled

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1 substances, that a pharmacist purchases, those are supposed to
2 be reported to the Drug Enforcement Administration through the
3 ARCOS system; isn't that right?

4 A There are certain reporting requirements of all areas of
5 distribution by the wholesaler or by the pharmacist.

6 Q And a DEA agent, a diversion investigator, for example,
7 has the authority to stop in at any pharmacist anywhere in the
8 country unannounced; isn't that right?

9 A Yes, sir.

10 Q And they can say to that pharmacist, "We are here to
11 search your records, and you can either consent to that
12 search, or we can go get a warrant"; isn't that right?

13 A Yes, sir.

14 Q And there's no legal requirement for that pharmacist to
15 ever be told when that diversion investigator is coming; isn't
16 that right?

17 A Yes, sir.

18 Q So is it fair to say then that a pharmacist, in his
19 activities at his stores, bears the risk of a drug enforcement
20 agent walking in at any time?

21 A Yes, sir.

22 Q And is it also fair to say that a pharmacist bears the
23 risk of a drug enforcement administrator --

24 MR. BACHNER: Withdrawn.

25 Q A drug enforcement investigator at any time coming into a

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1 pharmacy and saying, "I want to see all of your
2 prescriptions"?

3 A The law says within reasonable circumstances. So yes.
4 Yes and no, sir.

5 Q And a pharmacist is obligated to keep records; isn't that
6 right?

7 A Yes, sir.

8 Q Of all scripts written; isn't that right?

9 A Yes. In New York it's a five-year requirement.

10 Q And a drug enforcement administrator could come into a
11 pharmacy and say, "Sir, I want to see every prescription you
12 wrote for any particular doctor or any particular patient or
13 all of them for the last five years"?

14 A Yes, sir.

15 Q And is it also true under New York State law that if a
16 pharmacist refused to do that, he could be arrested? It's a
17 misdemeanor?

18 A Yes, sir.

19 Q And is it also fair to say that if a pharmacist, if he
20 refuses any of these unannounced audits or visits, he can be
21 shut down?

22 A Yes, sir.

23 Q With due process?

24 A Correct.

25 Q He would have a right to a hearing, et cetera; isn't that

1 right?

2 A Yes.

3 Q Sir, have you, in the 20 years that you've been a
4 pharmacist, ever been subject to these types of audits?

5 A No, sir.

6 Q When a pharmacist writes a prescription for a controlled
7 substance, either a Schedule II or a Schedule --

8 MR. BACHNER: Withdrawn.

9 Q Does a Schedule II prescription have to be filed or
10 treated in any way differently than a Schedule III, IV or V?

11 A Yes, and a pharmacist can't write a Schedule II
12 prescription. In New York, prior to 2006, each prescription
13 required a triplicate form to be completed by the doctor,
14 three pieces of paper, and those forms were sent to different
15 agencies, and the pharmacists had to maintain their copy for
16 five years. In 2006, New York required serialized paper
17 prescriptions for every prescription, and those are all fed
18 into a central data bank in New York for managing and
19 monitoring prescriptions.

20 Q Now, sir, a pharmacist, when he fills a Schedule II
21 prescription or a Schedule III, IV or V, he is required, by
22 the end of the day, to make sure that those prescriptions are
23 kept separate from each other; isn't that right, that they're
24 filed separately?

25 A Filed separately or be able to access them separately

1 through whatever computer programs they may have.

2 Q They have to be readily retrievable for a DEA agent who
3 wants to take a look at them; isn't that right?

4 A Yes, sir.

5 Q Now, it's a fact, is it not, that under New York State
6 law, a pharmacist can be assisted with the filling of
7 prescriptions by two unlicensed persons?

8 A Yes, sir.

9 Q Could you explain to the jury a little bit more what that
10 means?

11 A Sure. In New York and other states, they have personnel
12 that they've sometimes referred to as technicians, and the
13 technicians are allowed to help the pharmacist practice,
14 meaning taking the medications off the shelves, but the
15 technicians are not allowed to engage in any direct patient
16 activities, like counseling the patient on the medications or
17 making a decision on whether or not it's the right medication.
18 They have to leave everything there for the pharmacist to
19 double check.

20 Q Have you ever heard of the term "intern"?

21 A Yes, sir.

22 Q Is an intern someone who has graduated pharmacy school,
23 but is not yet licensed?

24 A Graduated or might be in their final semester of their
25 education.

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1 Q And can an intern dispense pharmaceuticals in a pharmacy?

2 A Not without a pharmacist present.

3 Q So if a pharmacist is present in the store, an intern can
4 dispense pharmaceuticals; isn't that right?

5 A Provided they've been double checked by the pharmacist.

6 Q There has to be supervision?

7 A Correct, sir, direct and immediate supervision.

8 Q Now, sir, is it also fair to say that an intern is
9 permitted to speak with and consult with customers?

10 A If the pharmacist makes the determination that they can,
11 yes.

12 Q And an intern can call up a physician to verify a script;
13 isn't that right?

14 A Again, if the pharmacist has said it's safe to do so.

15 Q And an intern is permitted to transcribe an oral
16 prescription to a written prescription; isn't that right?

17 A Yes.

18 Q And when I say an oral prescription, there are times that
19 a doctor may actually call up the pharmacy and say, "This is
20 an emergency, I'd like you to fill the following script";
21 isn't that right?

22 A For all substances except Schedules II's.

23 Q Except for Schedule II's. So they could do it for
24 Vicodin, for example?

25 A Yes.

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1 Q Or hydrocodone, which is a Schedule III?

2 A Yes.

3 Q And so long as the doctor follows up that script later
4 with a written script; is that right?

5 A With an oral prescription, they wouldn't have to follow
6 up with a written, but I think in New York City now because of
7 the requirement for the serialized prescription they would.
8 In other states, the oral prescription serves as a valid
9 prescription.

10 Q Now, sir, is it true that so long as there is no harm to
11 the patient and the prescription is valid, validly written by
12 a doctor, there is no limit to the number of Schedule II or
13 III prescriptions a doctor can prescribe to a patient?

14 A Yes, sir.

15 Q And is it also true that there is no time limit when a
16 Schedule II prescription must be filled after being signed by
17 the physician?

18 A No, there is a time limit, sir.

19 Q What is that time limit?

20 A Seventy-two hours.

21 Q So if a pharmacist gives a patient a prescription for
22 Vicodin and the patient gets in a car accident and can't fill
23 it for four days, what does he have to do?

24 A He has to go back to the physician or the physician has
25 to issue another prescription.

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1 Q Is that true for all schedule drugs, as far as you know?

2 A No. The other schedules has a six-month time limit on
3 those prescriptions.

4 Q Which one has 72 hours on it? I'm sorry.

5 A Schedule II's.

6 Q Sir, is it also fair to say that Schedule II drugs, while
7 they're highly addictive, are one of the most highly
8 prescribed drugs in the United States?

9 A I can't testify to that statistic, sir.

10 Q Do you know, sir, based upon your experience and your
11 testimony in various cases, whether or not the circumstances
12 of chronic pain in the United States is very substantial among
13 Americans?

14 A Again, I don't have information to testify to that stat.

15 Q Now, sir, in your dealing as a pharmacist 20 years ago
16 and with your national board, you've given testimony regarding
17 various controlled II and III drugs, have you not?

18 A Yes, sir.

19 Q And as part of that testimony, have you ever had to
20 offer -- have you ever read or offered opinions regarding the
21 state of chronic pain amongst U.S. citizens?

22 A Yes, sir.

23 Q Is it fair to say that the state of chronic pain among
24 Americans is substantial?

25 A My testimony involved what the requirements were for a

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1 patient to be designated as having chronic pain and what the
2 requirements for dispensing. I didn't touch upon or know
3 about the incidence or how prevalent it is.

4 Q Is hydrocodone a prescription drug that is prescribed
5 very often in the United States?

6 A Yes, sir.

7 Q And is it fair to say that hydrocodone and OxyContin are
8 equally addictive --

9 MR. BACHNER: Withdrawn.

10 Q They're addictive in their own ways whether the
11 prescription is legitimate or illegitimate? In other words,
12 it's the pill?

13 A Yes, sir.

14 Q Is it also fair to say that the reactions of a person
15 addicted to either Vicodin or OxyContin is the same whether or
16 not the script was legitimate or illegitimate?

17 A Yes, sir.

18 Q Now, is it also fair to say, in your experience, that
19 some doctors overprescribe --

20 A Yes, sir.

21 Q -- hydrocodone and OxyContin?

22 A Yes, sir.

23 Q Is it also fair to say, sir, that the doctors issuing
24 these prescriptions, on their face, the prescriptions look and
25 are legitimate?

1 A If they're overprescribing, as a pharmacist, I've
2 detected that overprescribing, and the pharmacist should
3 investigate that if they suspect it. So if on the face it was
4 overprescribing, it would look like overprescribing.

5 Q Sir, I just want to digress for a second.

6 You said earlier in your testimony that a doctor --

7 MR. BACHNER: Withdrawn.

8 Q A pharmacist has an obligation to check into a
9 prescription that he gets or she gets from a doctor that he
10 doesn't know or she doesn't know; is that right?

11 A Yes, sir.

12 Q So it's your experience then, sir, in your 20 years and
13 generally, that if you walk into the neighborhood Duane Reade
14 or CVS and have never been there before and give a
15 non-controlled prescription in, it's your experience that that
16 pharmacist doesn't fill that script until he makes a phone
17 call to the doctor?

18 A My experience is that the pharmacist is responsible to do
19 that. Whether or not the pharmacist does depends on whether
20 or not the state then comes back and will take an action
21 against that pharmacist's license.

22 For our VIPPS programs, those pharmacists have to
23 validate every prescription with every doctor if that doctor
24 is not part of their database.

25 Q So it's fair to say, sir, that that may be what the

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1 hopeful regulation is, but can we agree, sir, that in real
2 life for real everyday people, doctors checking with --
3 pharmacists checking with a doctor every time a patient comes
4 in to fill a non-controlled substance, that doesn't happen
5 very often?

6 THE COURT: You changed the question. Hold on. You
7 started off asking if the doctor is not in their system, he
8 doesn't know the doctor, is that the question you're asking?

9 MR. BACHNER: Correct.

10 THE COURT: Go ahead.

11 Q If a patient goes into a pharmacy, in your experience,
12 and has never been in that CVS before, walked down the block
13 and goes to Duane Reade because they've got a prescription
14 from their doctor, they say, "Oops, this is convenient, I'm
15 going to fill it," and then they go in there. Is it your
16 experience that most pharmacists don't call doctors to fill
17 these prescriptions?

18 MS. RASULO: Objection.

19 THE COURT: Again, I'm sorry. I just want to make
20 sure there's no misunderstanding.

21 Are you asking about a situation where the
22 pharmacist is presented with the prescription from a doctor
23 the pharmacist doesn't know?

24 MR. BACHNER: Correct, does not know.

25 THE COURT: Okay.

1 A In those situations, sir, what happens in most
2 pharmacies, from my experience, is that they would interact
3 with the patient to make sure that it was a legitimate
4 prescription by asking perhaps what they thought the
5 prescription was written for and then to make sure that the
6 prescription was legitimate for that and the prescription
7 looked legitimate, it didn't look like something was altered,
8 and if all that checked, then most times in pharmacies that's
9 what occurs with a non-controlled substance.

10 Q Now, sir, can we also agree that -- is that your
11 experience also with controlled substances?

12 A No, sir.

13 Q Now, can we agree that it's your experience with
14 controlled substances that if a patient comes in to a pharmacy
15 to fill a controlled substance prescription from a doctor that
16 the pharmacist does not know, that it's your experience that
17 that pharmacist will stop everything in the pharmacy and will
18 try and get that doctor on the phone to verify the
19 prescription, assuming that nothing appears suspicious?

20 A They'll do a couple of things. One, they'll try and
21 validate the doctor's DEA number. They'll check to see
22 whether or not they have that doctor in their database to make
23 sure it's a legitimate doctor and office address.

24 Q If I might, are you saying what they should do or, in
25 your experience, what they do?

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1 A What they do and what I do as a practicing pharmacist.

2 If that information doesn't coincide and there's any
3 suspicion, then the pharmacist would call the doctor.

4 Q Now, sir, when you fill prescriptions, did you ever fill
5 fraudulent ones?

6 A Yes, sir.

7 Q Is it fair to say, sir, you didn't fill a fraudulent
8 prescription because you're a bad guy or a bad pharmacist?

9 A No.

10 Q You were tricked?

11 A Yes, sir.

12 Q And is it fair to say, sir, that even experienced
13 pharmacists like yourself, with the best of intentions, can be
14 overworked; is that correct?

15 THE COURT: Did you understand the question?

16 THE WITNESS: I did. I don't understand the --

17 Q In your experience, sir, there are some pharmacists --

18 MR. BACHNER: Withdrawn.

19 Q Being a pharmacist, Dr. Catizone, can be a very tedious
20 profession; isn't that correct?

21 A Yes, sir.

22 Q You're sitting there. You're dealing with patients
23 coming in who have problems; isn't that right?

24 A Yes, sir.

25 Q And some of them are big complainers; isn't that right?

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1 "Doctor, help me right away. Help me right away."

2 Have you ever had that?

3 A I've treated each patient and listened to them, but
4 whether they were complainers or not.

5 Q Correct. I don't mean that you were passing judgment on
6 them, but people come into pharmacies like every human being
7 react to their pain and problems different; isn't that right?

8 A Yes, sir.

9 Q Some people react to pain and can bear it; isn't that
10 right?

11 A Yes, sir.

12 Q Some people have a headache, and they think that they're
13 dying, correct?

14 A Yes.

15 Q And you as a pharmacist, sir, have an obligation --

16 MR. BACHNER: Withdrawn.

17 Q When you're a pharmacist, some patients come in and say,
18 "Fill my script right away, please, please, please. I can't
19 wait."

20 Have you ever had that happen?

21 A Yes.

22 Q And at times, you may give that patient fronties on the
23 line, and sometimes you may say, "You got to wait your time";
24 isn't that right?

25 MS. RASULO: Objection, judge.

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1 THE COURT: Come to the sidebar.

2 (Sidebar.)

3 (Continued on next page.)

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Sidebar

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1 (Side-bar conference held on the record out of the
2 hearing of the jury.)

3 THE COURT: I thought you weren't ready to put on
4 your case?

5 I and your adversary have given you a lot of
6 latitude here.

7 What's going on?

8 MR. BACHNER: I'm trying to --

9 THE COURT: I know what you're trying to do. You're
10 given your turn. The Government has theirs.

11 You're well beyond the scope of the direct
12 examination. I've given you latitude.

13 MR. BACHNER: I don't want to give this guy a
14 subpoena and make him come back again.

15 THE COURT: I understand, but there's a limit here.
16 Where are you going?

17 MR. BACHNER: I will take five minutes, and then I'm
18 done with this area.

19 MS. RASULO: With this area? I feel like he's gone
20 far afield already.

21 THE COURT: He has gone far afield.

22 MR. BACHNER: They put him on as an expert, your
23 Honor, in the field of pharmacy and what it's like to be a
24 pharmacist and what the rules are.

25 MS. MERKL: That's not what he was qualified to do.

Sidebar

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1 THE COURT: No, that's your area of inquiry.

2 MR. BACHNER: Well, I mean, they did put him on to
3 talk about what a pharmacist can do, what the red flags are,
4 what he's supposed to do when certain things happen.

5 I'm trying to establish with this pharmacist that
6 despite all these red flags, people can be trained --

7 THE COURT: But you're talking about cranky patients
8 and everything else.

9 MR. BACHNER: I understand. I'll move on.

10 THE COURT: Wind it up.

11 MR. BACHNER: I'll move on.

12 (Sidebar end.)

13 (Continued on following page.)

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1 (In open court.)

2 BY MR. BACHNER:

3 Q Mr. Catizone, just to wind up this area.

4 When you were a pharmacist and you filled fraudulent
5 prescriptions, is it fair to say that the reason you filled
6 those prescriptions was because you were tricked by
7 individuals who were good at what they did?

8 A Yes.

9 Q That is, tricking the pharmacist?

10 A Yes.

11 Q Do you believe, sir, that in filling any of these
12 prescriptions, you may have inadvertently missed a red flag?

13 A Yes.

14 MS. RASULO: Objection.

15 THE COURT: I don't understand the question.

16 BY MR. BACHNER:

17 Q You testified earlier that pharmacists have these red
18 flags they're supposed to be looking for when they fill
19 prescriptions.

20 Is it fair to say, sir, that, in your experience,
21 either yourself or other pharmacists who have good intentions
22 of helping their patients can miss these red flags innocently?

23 A Yes, sir.

24 Q Sir, is there any rule about how a patient pays a
25 pharmacist?

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1 A There's no rule, but there is some red flags of things
2 that may not be appropriate for what that patient engages in.

3 Q You're aware that there are probably 40 million Americans
4 that don't have any insurance?

5 A Yes.

6 Q And if I'm one of those 40 million Americans and I have a
7 car accident where I have sciatic pain and I can't sleep and I
8 need an OxyContin prescription and the doctor gives me one
9 legitimately and I can't afford to pay for that script, I can
10 pay in cash, right?

11 A Yes.

12 Q Is there a rule about how much a pharmacist is permitted
13 to charge me per pill?

14 A Some states regulate that, sir.

15 Q And some don't?

16 A Yes, sir.

17 Q Do you know what New York does?

18 A I know New York has to post the prices. That's a
19 requirement the Board of Regents put in place, and those
20 prices are then monitored by the Board of Regents.

21 Q The prices that are set in New York, those are just to
22 notify the patient what the recommended price is; isn't that
23 right? It's not a rule?

24 A Or what the price is being charged by that pharmacy.

25 Q Do you know what price a pharmacist is permitted to

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1 charge for a single cash hydrocodone pill?

2 A No, sir, I don't.

3 I know that only four percent of all prescription
4 medications are actually paid for by cash across the country,
5 but I don't know what the specific amount is that they can
6 charge for one tablet.

7 Q Is it also fair to say that a pharmacist can -- there are
8 also times, you're aware, that a person's, I always confuse
9 Medicare and Medicaid. I apologize. I'm not quite there at
10 that point in my age. But is it fair to say that one of those
11 things runs out for pharmaceuticals and then you've got to go
12 to cash; isn't that right?

13 A No.

14 Q Is there something called the doughnut hole?

15 A There are supplemental plans that people can buy for
16 their Medicare coverage.

17 Q If they can afford it?

18 A Yes.

19 Q And if they can't afford it, what do they do?

20 A Then they have to pay cash.

21 Q Sir, let's assume I went to my pharmacist and my
22 pharmacist said to me, "You don't have any insurance. This is
23 the bill. This is what you owe me. You have to pay cash."
24 And the fellow said, "Look, I've been seriously injured. I'm
25 in pain. I need these. I was in Desert Storm. I was

C. Catizone - Bachner / Cross

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1 injured. Can I pay for this prescription by bartering a
2 service with you?"

3 MS. RASULO: Objection, your Honor.

4 THE COURT: Overruled.

5 Go ahead.

6 A I'm not familiar with that ever happening in practice.

7 Q Is it illegal, in your mind, based upon your regulations,
8 for a pharmacist to say, "You know what, you can't afford to
9 pay for the pills. You're in the printing business. Give me
10 some business cards"?

11 A In my experience, what's been bartered has been illegal.

12 Q Can that happen legally?

13 A Legally, I can't say whether it could or not, sir.

14 Q Well, sir, a pharmacist could not charge his client at
15 all; isn't that right?

16 A No, sir. In a chain pharmacy or other corporation, they
17 have very specific policies that wouldn't allow for bartering.

18 Q How about a retail pharmacy? If it's my pharmacy; I own
19 it?

20 A That would be up to you, sir.

21 Q So if the client came in and I liked him, I felt sorry
22 for him, and he said he couldn't afford to pay the script. I
23 could say, "You know what, the Vicodin cost me twenty cents
24 apiece. You need 40 of them. Take it. It's okay. It's on
25 me"?

C. Catizone - Bachner / Cross

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1 A I really don't have anything to be able to answer that.

2 Q Well, in your mind, is it appropriate?

3 THE COURT: Mr. Bachner, you're going to have to
4 move along and wind this up.

5 Q Sir, for a prescription to be facially valid for a
6 controlled substance, sir, it's true, is it not, that the
7 address does not have to be written in by the doctor?

8 A The patient's address?

9 Q Correct.

10 A Yes, sir.

11 Q It's true it does not?

12 A Correct.

13 Q And is it also fair to say, sir, that --

14 MR. BACHNER: Withdrawn.

15 Q Have you ever had a client come in from a pharmacist --

16 MR. BACHNER: Withdrawn.

17 Q I don't want to make it with you again, but in your
18 experience, have you ever had the occasion to see a
19 circumstance in which a doctor dispenses a controlled
20 substance to a client and neglects to put the client's name
21 on?

22 A Not very often, sir.

23 Q It's happened infrequently?

24 A But not for a Schedule II. It's required, patient's name
25 is required for a Schedule II.

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1 Q I understand that. To be a valid prescription, it's
2 supposed to be on there.

3 I'm asking you whether or not, in your experience,
4 have you ever come across where, as rare as it may be, it's
5 happened?

6 A Yes, in rare times, sir.

7 Q Sir, a doctor, you told the jury on direct, can only
8 prescribe a 30-day limit for a controlled substance; is that
9 right?

10 A No.

11 Q Did I get that right?

12 A No, sir.

13 MS. RASULO: Objection, your Honor.

14 THE COURT: Overruled.

15 A I testified that in New York State, they could only
16 prescribe a 30-day supply for OxyContin. It could be extended
17 to a 90-day supply if there's documentation that there's
18 special circumstances for that patient.

19 Q Now, sir, if a doctor prescribes OxyContin 30-day script
20 on January 1st, what is the earliest that that same patient
21 may get another 30-day prescription?

22 A Again, according to the directions the doctor would
23 write, would be 30 days after that.

24 Q Isn't it really 23 days? Isn't there a seven-day?

25 A It's 30 days.

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1 Q You're not aware of whether or not it can actually be
2 filled on the third week, on the 23rd?

3 A Again, as a pharmacist and in my experience, we wouldn't
4 fill those prescriptions before the 30-day time.

5 Q Sir, again - winding down, your Honor - in your
6 experience, if a patient comes in and pays for his
7 prescription with insurance and then gets a prescription from
8 another doctor before the 30-day period that he's entitled to
9 have that prescription filled and tries to fill it with his
10 insurance again, it's a fact, is it not, his insurance will
11 reject that prescription?

12 A Yes.

13 Q Sir, are there circumstances under which a doctor faxes a
14 prescription to a client?

15 A Yes, sir.

16 Q To a pharmacist?

17 A Yes, sir.

18 Q And under what circumstances does that occur?

19 A Those are generally non-controlled substance and
20 definitely not for Schedule II's.

21 Q They can do it for Schedule III's though; is that
22 correct?

23 A I'm not certain in New York, but I think the DEA has just
24 allowed the requirements that they can fax from III's through
25 V's, but not for II's.

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1 Q Again, in case of a Schedule III emergency, the doctor
2 has to -- client comes in to the doctor and he says, "Doctor,
3 I'm in a lot of pain." The doctor sees him and the patient is
4 in no physical condition to go to the pharmacist.

5 Can't a doctor call up the pharmacy orally and he
6 can order the prescription; isn't that correct?

7 A Yes, sir.

8 Q Is it your understanding, sir, that there is a
9 requirement that a fax copy of that prescription then be
10 supplied to the pharmacist within seven days?

11 A Again with New York, because of the serialized
12 prescription and paper, there would be a requirement for that
13 to be presented to the pharmacy.

14 Q Sir, can a Schedule II controlled substance be refilled?

15 A No, sir.

16 Q Can a Schedule III be refilled?

17 A Yes, sir.

18 Q Is a pharmacist, sir, permitted to give a partial fill of
19 a prescription?

20 A For the Schedules III through V, yes. Schedule II's,
21 again, there's a time limit that the balance must be provided
22 to the patient.

23 Q So if a patient has a script for 80 pills, but can't
24 afford to pay for all 80 at one time, is it fair to say that
25 the pharmacist can say, "Well, I'm going to fill this

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1 prescription for the amount of pills that you can pay for and
2 then when you pay for the balance I'll give you the rest of
3 the prescription"?

4 A Yes.

5 Q Sir, a doctor's DEA number, that's not public
6 information, is it?

7 A No, sir.

8 Q Sir, just literally in finishing up with you.

9 In your experience, sir, you're aware that although
10 a pharmacist has to be careful of these red flags, it's also
11 true, is it not, that a pharmacist also has to be careful not
12 to improperly accuse of patient of being an abuser of pills?

13 THE COURT: Not good for business, I would assume.

14 THE WITNESS: Yes.

15 Q Well, are you, sir, aware of regulatory matters in which
16 pharmacists have been charged for, quote/unquote, jumping to
17 conclusions and refusing fill prescriptions for individuals
18 who, in fact, had legitimate scripts?

19 A The only incidents I'm aware of, sir, concerned the
20 Plan B products where a pharmacist refused to dispense the
21 contraceptive medication. The other pain medications I'm not
22 aware of, sir.

23 Q But we can agree, sir, in your experience, a pharmacist
24 has a very narrow line at times to walk, and that is trying to
25 fill his obligations not to harm the patient and appropriately

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1 fill a script and also not to improperly not fill a script for
2 an individual who needs his pain medication?

3 MS. RASULO: Objection.

4 THE COURT: Sustained.

5 Let's go.

6 MR. BACHNER: Your Honor, I just need one more
7 minute to speak to my client.

8 (Pause in the proceedings.)

9 MR. BACHNER: Thank you, very much, Mr. Catizone. I
10 appreciate you coming in.

11 THE COURT: Anything else?

12 MS. RASULO: I have just a few questions, judge.

13 THE COURT: Go ahead.

14 REDIRECT EXAMINATION

15 BY MS. RASULO:

16 Q To your knowledge, do state boards accredit national
17 organizations?

18 A No, they don't.

19 Q You had spoken during the cross-examination about the red
20 flags of payment.

21 Can you explain those a little bit more for the
22 jury?

23 A Sure. Studies that have been conducted of pharmacies and
24 how patients are able to pay for those prescriptions indicate
25 that with Medicare and other insurance programs --

1 MR. BACHNER: Objection, your Honor. Calls for
2 hearsay.

3 THE COURT: Overruled.

4 A That presently, 96 percent of prescriptions that are
5 dispensed in pharmacies are covered by some form of insurance.
6 Only four percent of prescriptions are actually paid for
7 through cash.

8 THE COURT: He's already testified to that in
9 response to one of your questions.

10 Next question.

11 BY MS. RASULO:

12 Q Should a pharmacist fill a fraudulent prescription
13 because they feel sorry for someone?

14 A No. It's against the law.

15 Q Or because they feel rushed?

16 A No. It's against the law.

17 Q Now, in the fraudulent prescriptions that you
18 inadvertently filled, did you write that you had verified the
19 prescription on the prescription when you filled that
20 prescription?

21 A Yes.

22 Q You wrote that you verified the prescription with the
23 doctor when you inadvertently filled a fraudulent
24 prescription?

25 A I'm sorry, I didn't hear you.

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1 MR. BACHNER: Asked and answered, your Honor.

2 THE COURT: Go ahead and ask your question.

3 Q Mr. Catizone, when you inadvertently filled the
4 fraudulent prescription, had you written on the prescription
5 that you verified that prescription with the doctor?

6 A No.

7 MS. RASULO: Thank you. I have no further
8 questions.

9 THE COURT: Anything else, Mr. Bachner?

10 MR. BACHNER: No recross.

11 THE COURT: Thank you, very much, sir. You are
12 excused.

13 (The witness leaves the witness stand.)

14 THE COURT: We had a late start. We're going to
15 take five minutes.

16 COURTROOM DEPUTY: All rise.

17 (Jury exits the courtroom.)

18

19 (Continued on following page.)

20

21

22

23

24

25

Proceedings

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1 (In open court.)

2 (The following occurs outside the presence of the
3 jury.)

4

5 THE COURTROOM DEPUTY: All rise.

6 THE COURT: Let's bring the jury in.

7 THE COURTROOM DEPUTY: Sure.

8 (Pause in the proceedings.)

9

10 THE COURT: Mr. Loftus?

11 MR. BACHNER: Loftus?

12 MS. RASULO: Yes, we're putting Loftus back on the
13 stand.

14 (Witness enters and resumes stand.)

15 THE COURT: Who would be expected to be after
16 Mr. Loftus?

17 MS. RASULO: A doctor. Dr. Duarte.

18 (Pause in the proceedings.)

19

20 (Continued on following page.)

21

22

23

24

25

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1 THE COURTROOM DEPUTY: All rise.

2 (Jury enters.)

3 (The following occurs in the presence of the jury.)

4

5 (In open court.)

6 THE COURT: All right. Please, be seated.

7 We resume the direct testimony of Mr. Loftus. I
8 remind the witness you've been sworn and remain under oath.

9 Do you understand?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. Please, continue.

12

13 STEPHEN LOFTUS,

14 called by the Government, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. RASULO: (Continued)

18 Q Now, Investigator Loftus, just to refocus everybody on
19 your testimony, where we left off.

20 You did a site visit to Family Chemists on
21 December 7th, 2005?

22 A Yes.

23 Q And I believe you had talked about having reviewed the
24 prescriptions?

25 A Yes. Diversion Investigator Jordan and myself reviewed

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1 prescriptions at Family Chemists on that date.

2 Q And what were you looking for again?

3 A We were looking for signs of diversion.

4 Q Such as?

5 A Overwrites on the prescriptions. Patients filling at
6 very short intervals for the same controlled substance.

7 Q And what were the results of your review?

8 A Certain prescriptions stood out. Prescriptions from a
9 Dr. Iandoli appeared to have signs of diversion on their face,
10 and we asked to make copies of those prescriptions.

11 And we also asked for physician and patient
12 profiles.

13 MS. RASULO: Your Honor, permission to approach the
14 witness?

15 THE COURT: Go ahead.

16 MS. RASULO: I'm showing you what has been marked
17 for identification as Government's Exhibit 3.

18 (Hanging.)

19 MS. RASULO: If you can take a look at this Exhibit,
20 let me know when you're finished with it.

21 (Hanging.)

22 MS. RASULO: Thank you.

23 Q Investigator Loftus, are you familiar with Government's
24 Exhibit 3?

25 A Yes.

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1 Q How are you familiar with it?

2 A It's the patient profiles that were produced for
3 Diversion Investigator Jordan and myself on December 7th,
4 2005, by Mr. Hossaini.

5 Q And is anything else contained in this Exhibit?

6 A Copies of prescriptions.

7 Q From that visit that you copied?

8 A Yes, prescriptions that to Diversion Investigator Jordan
9 and myself appeared to have signs of diversion.

10 MS. RASULO: Your Honor, at this time the Government
11 moves Exhibit 3 into evidence.

12 THE COURT: Any objection?

13 MR. BACHNER: These are the Iandoli?

14 MS. RASULO: These are the prescriptions and the
15 patient profiles seized on December 7th.

16 MR. BACHNER: No objection.

17 THE COURT: Government's Exhibit is now in evidence.
18 (Government's Exhibit 3 was received in evidence.)

19 MS. RASULO: Permission to publish, Your Honor?

20 THE COURT: Go ahead.

21 (The above-referred to exhibit was published to the
22 jury.)

23 Q Now, Mr. Loftus, I'm going to direct your attentions to,
24 I believe, it's the 16th and 17th page of this Exhibit?

25 And what is this in particular?

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1 A This is the patient profile for a Ms. Michelle Robinson.
2 It was generated for Diversion Investigator Jordan and myself
3 by Mr. Hossaini on December 7th, 2005.

4 MS. RASULO: I'm go to try to zoom in a little
5 better.

6 Q How do you know it's for Michelle Robinson?

7 A Her name appears under the heading "client" in the upper
8 left-hand corner; "Robinson", comma, space, "Michelle".

9 Q Can you explain how to read this patient profile?

10 A The patient profile is read from left to right. The
11 columns have headers: Date, prescription number, drug name,
12 NDC number, quantity, prescriber name, amount, patient paid.

13 And the method that we use the read the patient
14 profiles involves simply analyzing the date and the
15 prescription number and the drug name and the physician to
16 determine if diversion is likely in this case.

17 Q And this appears to be -- it's dated in the top left-hand
18 corner December 7th of 2005; is that correct?

19 A Yes.

20 Q And it appears the first date is November 22nd, 2004?

21 A Yes.

22 Q And it appears this patient profile ends three pages
23 later at the date December 12th, 2005.

24 Can you see that?

25 A Yes.

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1 Q Now, did you review this patient profile?

2 A Yes, I did.

3 Q And what were the results of your review?

4 A The patient profile indicated diversion to me because --

5 MR. BACHNER: Objection, Your Honor.

6 THE COURT: No, I'll permit it. Overruled.

7 A The patient profile indicated diversion to me because
8 Michelle Robinson had filled prescriptions by Dr. Iandoli for
9 hydrocodone on very short intervals. So, what would normally
10 be a monthly script, she, on a couple of occasions, came in
11 and filled in less than two weeks. So, rather than a longer
12 interval, which would be standard, she filled it at very short
13 intervals.

14 MR. BACHNER: Your Honor, could we have a sidebar,
15 please?

16 THE COURT: No, I understand your concern.

17 MR. BACHNER: Relevance.

18 THE COURT: The relevant information here is simply
19 the observations that this gentleman is reciting to you.
20 Whether it suggests a diversion or anything of the sort is for
21 you to decide, okay? He's just pulling the information out
22 from here and testifying about it.

23 Go ahead.

24 MS. RASULO: So, for example, I'm directing your
25 attention to the next page. It's the second page of the

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1 patient script. If you can look at the month of May.

2 (The above-referred to exhibit was published to the
3 jury.)

4 Q Do you see that in, I think, it begins on May 4th of
5 2005?

6 A Yes.

7 Q Do you see that?

8 A Yes.

9 Q So, for the month of May, can you describe the filling
10 habits of Michelle Robinson as reflected in this patient
11 profile?

12 A Ms. Robinson filled prescriptions at Family Chemists from
13 Dr. Iandoli on May 4th, May 9th, May 12th, May 19th, May 24th,
14 all for the same controlled substance. Hydrocodone.

15 Q And those were all from Dr. Iandoli?

16 A Yes.

17 Q And in total, how many pills -- if you can do the math --
18 how many pills were then dispensed to Ms. Robinson within the
19 month of May pursuant to the Iandoli prescriptions?

20 (Pause in the proceedings.)

21 Q I count 350?

22 A Yes, I have 350 as well.

23 Q 350 pills?

24 A Yes.

25 Q Of hydrocodone?

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1 A Of hydrocodone, yes.

2 Q Now, is there anything else with respect to that visit
3 that you can recall?

4 A During the review of prescriptions by Diversion
5 Investigator Jordan and myself, we noticed that Mr. Hossaini
6 did not have any prescriptions in the pharmacy from 2004.

7 It's a DEA requirement that records be kept two
8 years back and considering that it was December of 2005, we
9 were expecting to find 2004 prescriptions.

10 Q And were you -- did you inform Mr. Hossaini of that
11 requirement?

12 A Yes, we did.

13 Mr. Hossaini stated that he had stored the
14 prescriptions in his home due to space concerns.

15 Q Did you explain to him that he needed permission to do
16 that?

17 A Yes, we did.

18 Diversion Investigator Jordan and myself explained
19 to Mr. Hossaini that if he wanted to store his prescriptions
20 away from his registered location, that being Family Chemists,
21 he had to send a letter to the DEA requesting permission to do
22 so.

23 Q And to your knowledge, do you know if Mr. Hossaini ever
24 did that?

25 A To my knowledge, he did not.

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1 Q Now, how long were you in Family Chemists on
2 December 7th, 2005?

3 A Approximately two hours.

4 Q And can you describe for the jury the type of foot
5 traffic that you saw with respect to customers at Family
6 Chemists?

7 A There was a steady stream of one to two customers at a
8 time.

9 Q Now, I want to direct your attention to the second visit
10 that you testified that you had conducted.

11 And that's on February 28th, 2007; is that correct?

12 A Yes.

13 Q Now, why did you return to Family Chemists on
14 February 28th of 2007? What was the purpose?

15 A I returned to Family Chemists on February 28th, 2007, at
16 the direction of Diversion Investigator Jaramillo to complete
17 an inventory of hydrocodone and oxycodone controlled
18 substances.

19 Q And what is an inventory?

20 A An inventory is a count, of oxycodone and hydrocodone
21 controlled substances in this case, that was to be conducted
22 that day, and it's an inventory of all of the hydrocodone and
23 oxycodone products that are on-site at the registered location
24 at that time.

25 Q And what time of day was it?

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1 A Early afternoon.

2 Q And who were you with?

3 A I was with Special Agent Busky, Special Agent Manko,
4 Special Agent Quigley, Diversion Investigator Gellen, myself
5 and Diversion Investigator Jaramillo as well.

6 Q Now, what was your role in conducting the inventory?

7 A I transcribed the inventory as Mr. Hossaini conducted it
8 at the tablet counter.

9 Q And what do you mean "as Mr. Hossaini conducted it"?

10 A Mr. Hossaini's role in the inventory was to take the
11 controlled substances that were the focus of the inventory and
12 run them through the tablet counter to establish an accurate
13 count for each product.

14 Q And what were the controlled substances that were the
15 focus of the inventory?

16 A Oxycodone and hydrocodone products.

17 Q And did anyone assist Mr. Hossaini in running the pills
18 through the counter?

19 A Ms. Hossaini retrieved oxycodone and hydrocodone products
20 from the shelves and occasionally assisted in counting them
21 through the tableting machine.

22 Q And what is your understanding of who Ms. Hossaini is
23 with respect to the defendant?

24 A It's my understanding that Ms. Hossaini is Mr. Hossaini's
25 sister.

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1 Q And did you, yourself ever physically count the pills?

2 A No.

3 Q And how did you determine -- was there any way in which
4 you determined that the equipment itself was functioning
5 properly in terms of the counter?

6 A We function-checked the tablet counter with 20 manually
7 counted tablets prior to conducting the inventory.

8 Q Now, I'm showing --

9 MS. RASULO: Your Honor, permission to approach?

10 THE COURT: Go ahead.

11 MS. RASULO: I'm showing you what's been marked for
12 identification as Government's Exhibit 39.

13 (Handing.)

14 Q Do you recognize Government's Exhibit 39?

15 A Yes. It's a diagram of the interior of Family Chemists.

16 Q And does it appear to be an accurate diagram of the
17 interior of Family Chemists?

18 A Yes.

19 MS. RASULO: Your Honor, the Government moves
20 Exhibit 39 into evidence.

21 THE COURT: Any objections to 39?

22 MR. BACHNER: Just a brief voir dire, Your Honor?

23 THE COURT: Go ahead.

24

25

1 VOIR DIRE

2 BY MR. BACHNER:

3 MR. BACHNER: Good afternoon, Agent. I get a chance
4 to just ask you a few questions on the diagram.

5 What's it based on; your memory of what it looks
6 like? The diagram, how is it put together?

7 THE WITNESS: The diagram is an accurate
8 representation of the interior of Family Chemists as I recall
9 it.

10 MR. BACHNER: So, in other words, it's not the
11 actual blueprint. It's how you recall it looking that day.

12 THE WITNESS: It's not a blueprint. No, sir.

13 THE COURT: It's a hand-drawn diagram?

14 THE WITNESS: It's not hand-drawn. It was done up
15 on the computer.

16 THE COURT: Okay.

17 MR. BACHNER: Just so we're clear, it's your
18 recollection of what it looked like. It's not necessarily the
19 real -- what it actually looked like?

20 THE WITNESS: It's not a photograph, but it is an
21 accurate representation of the interior of the pharmacy.

22 MR. BACHNER: Does it accurately depict how many
23 feet it is?

24 THE WITNESS: There's not a scale on the diagram, to
25 my knowledge.

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1 MR. BACHNER: So, the diagram merely reflects your
2 recollection of where the counter was, where the rooms were,
3 things of that nature?

4 THE WITNESS: Yes.

5 MR. BACHNER: But not to scale?

6 THE WITNESS: There is no scale on the diagram.

7 MR. BACHNER: Thank you, Your Honor. For that
8 limited purpose.

9 THE COURT: Okay. Any objection?

10 MR. BACHNER: Not for that limited purpose,
11 Your Honor.

12 THE COURT: Okay. Exhibit 39 is in evidence.

13 (Government's Exhibit 39 was received in evidence.)

14 MS. RASULO: Permission to publish, Your Honor?

15 THE COURT: Go ahead.

16 (The above-referred to exhibit was published to the
17 jury.)

18 BY MS. RASULO:

19 Q Can you explain this diagram? Where is the front door,
20 for example?

21 A The front door is located at the bottom of the diagram in
22 the center.

23 Q Where I'm indicating at the bottom of Government's
24 Exhibit 39 (indicating)?

25 A Yes.

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1 Q And what are these shelves (indicating)?

2 A The shelves are where Mr. Hossaini stored or displayed
3 health and beauty items, and candy, and various other things.

4 Q And this counter area (indicating)?

5 A Yes, that's where Mr. Hossaini dispensed the controlled
6 substances and met with his customers.

7 Q Now, where were you conducting the inventory?

8 A I conducted the inventory at the tableting -- the tablet
9 counting machine on the counter. It's marked "counter for
10 back room" right next to the window. Right next to the
11 diagram feature marked "window".

12 Q And so, it would be this area right here (indicating)?

13 A Actually, over by the C in the word "counter" is where
14 the tablet counting machine was.

15 Q Right here (indicating)?

16 A Yes.

17 Q Okay. And that's where you were?

18 A Yes.

19 Q And where were the oxycodone and hydrocodone products
20 that were the subject of the inventory? Where were they?

21 A They were stored in the areas marked "shelf" on the
22 diagram. The three areas marked "shelf".

23 Q At the top of the diagram?

24 A Yes.

25 Q And do you know where the prescriptions were maintained?

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1 A The prescriptions were maintained at various locations in
2 the rear of the pharmacy.

3 The ones that were retrieved for -- during that
4 particular visit were in an area called, the area called
5 "white closet" over on the right-hand side.

6 Q And this is this area right here over on the right-hand
7 side of the diagram (indicating)?

8 A Yes.

9 Q Okay. Now, as you were conducting the inventory, what
10 were the other DEA personnel doing at the time?

11 A They were reviewing dispensing logs, DEA-222 order forms,
12 and prescriptions.

13 Q And did they collect any prescriptions?

14 A Yes, they did.

15 MS. RASULO: Your Honor, permission to approach?

16 THE COURT: Go ahead.

17 MS. RASULO: I'm showing you what's been admitted,
18 subject to connection, Government's Exhibit A. Some of them
19 have -- and others just marked for identification --
20 Exhibits 16-A through 16-V.

21 Take a look at these prescriptions and let me know
22 when you're finished.

23 (Hanging.)

24 (Pause in the proceedings.)

25

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1 Q Now, Investigator Loftus, do you recognize Government's
2 Exhibits 16A through V?

3 A Yes.

4 Q How do you recognize them?

5 A I recognize them as the prescriptions that were removed
6 on February 28th, 2007.

7 MS. RASULO: Your Honor, at this time the Government
8 moves Exhibits 16A through V into evidence.

9 MR. BACHNER: No objection.

10 THE COURT: Thank you. 16 -- again?

11 MS. RASULO: 16A through V, as in Victor.

12 THE COURT: A through V, thank you. Received.

13 (Government's Exhibits 16A through 16V were received
14 in evidence.)

15 BY MS. RASULO:

16 Q Now, Investigator Loftus, how long were you in the Family
17 Chemists during the inventory?

18 A Approximately four hours.

19 Q And again, what was the foot traffic like in the
20 pharmacy?

21 A One to two customers at a time, steady, throughout our
22 stay.

23 Q And did Mr. --

24 MS. RASULO: Strike that.

25 Q Did the defendant say anything to you about closing his

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1 pharmacy at that point?

2 A No.

3 MS. RASULO: No further questions, Your Honor.

4 Oh, excuse me. Actually, I do. Sorry.

5 THE COURT: That's all right.

6 Q At the completion of your inventory, was there any kind
7 of paperwork or anything along those lines that were filled
8 out?

9 A There was a three-page inventory that I transcribed while
10 Mr. Hossaini conducted the controlled substance inventory. I
11 signed it, as did Mr. Hossaini.

12 MS. RASULO: Permission to approach?

13 THE COURT: Go ahead.

14 MS. RASULO: I'm showing you what's marked for
15 identification as Government's Exhibit 12.

16 (Hanging.)

17 (Pause in the proceedings.)

18 Q Do you recognize Government's Exhibit 12?

19 A Yes.

20 Q And how do you recognize it?

21 A It's the inventory taken by Mr. Hossaini and myself.

22 MS. RASULO: Your Honor, at this time the Government
23 moves Exhibit 12 into evidence.

24 MR. BACHNER: No objection, Your Honor.

25 THE COURT: Received in evidence.

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1 (Government's Exhibit 12 was received in evidence.)

2 MS. RASULO: Just briefly.

3 (The above-referred to exhibit was published to the
4 jury.)

5 Q Can you explain -- this is what appears to be a
6 three-page document.

7 And can you just explain briefly how to read this
8 document?

9 A The inventory, the inventory control sheet is divided
10 into product, quantity and package size columns.

11 When reading the sheet, simply read from left to
12 right and you'll see the name of the product, whether it's
13 hydrocodone, oxycodone in generic form or the brand name.

14 And then, move to the right, across, and you will
15 see the number of tablets that were counted by Mr. Hossaini.
16 And then, you'll also see the package size that the tablets
17 were held in at the time they were counted.

18 Q And at the bottom it appears that the same phrasing is
19 repeated at the end of each page; is that right?

20 A Yes. To ensure accuracy in terms of the inventory, each
21 page is signed after it's completed.

22 Q And if you could just read into evidence what the bottom
23 of this page states?

24 A "This inventory was taken in the presence of Wahid
25 Hossaini, owner, who attested to the accuracy of the count".

1 Then Mr. Hossaini's signature appears below and
2 there's the date of February 28th, 2007.

3 Q And where is your signature?

4 A My signature is at the top portion, next to signature of
5 investigator. My signature is the first signature.

6 Q And that, that phrasing and the signature is repeated on
7 each page of the inventory?

8 A Yes.

9 MS. RASULO: I have no further questions at this
10 time.

11 THE COURT: All right.

12 Mr. Bachner?

13 MR. BACHNER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. BACHNER:

16 Q Good afternoon, Agent.

17 A Good afternoon.

18 Q Agent, when you visited the pharmacy on December 7th of
19 '05, you came in with, I think, with Denise Jordan; is that
20 right.

21 A Yes.

22 Q And you announced your authority that you were there to
23 conduct an audit; is that correct?

24 A We were there to review prescriptions. That's what we
25 informed Mr. Hossaini of.

1 Q And you gave, I think, Government's Exhibit 10, which is
2 the notice of inspection; is that right?

3 MR. BACHNER: I'm sorry, is it 10? The notice of
4 inspection, which is -- yes, Government's 10, which I'm just
5 going to put up briefly on the screen.

6 (The above-referred to exhibit was published to the
7 jury.)

8 Q And part of the notice of inspection, it indicates does
9 it not that at or about 11:50 a.m., that is when the
10 inspection began.

11 That's when you entered the premises; is that right?

12 A Yes.

13 Q All right. And these are the statements of rights that
14 are given to any pharmacist.

15 And they were given to Mr. Hossaini; were they not?

16 A Yes.

17 Q And you advised Mr. Hossaini that he had a Constitutional
18 right to not to have this inspection done without a warrant;
19 isn't that correct?

20 A Yes.

21 Q So, just to put that in English, Mr. Hossaini could have
22 said to the investigators, to you and Ms. Jordan, thank you
23 but no thank you, I'd like to you come back. Go to a Judge
24 and get a warrant; isn't that right?

25 A Yes.

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1 Q And he didn't do that; did he?

2 A No.

3 Q In fact, he was cooperative; was he not?

4 A Yes.

5 Q He was calm?

6 A Yes.

7 Q And he was extremely sociable with you; was he not?

8 A Yes.

9 Q And you also told him that he had a right to refuse to
10 consent to this inspection; isn't that right?

11 A Yes.

12 Q So, he could have said to you, I don't want you in my
13 store, I don't want you looking at my prescriptions and my
14 documents. Leave.

15 He could have refused to consent; isn't that right?

16 A Yes.

17 Q But he didn't?

18 A No, he did not.

19 Q And you even warned him that when you conducted this
20 audit -- this inspection, I'm sorry -- that you may find stuff
21 there that can be used against him. Number three says:
22 "Anything of an incriminating nature may be found, seized and
23 used against you, even in a criminal prosecution."

24 Isn't that right?

25 A Yes.

1 Q So, when you went there, Mr. Hossaini was advised by you
2 that the stuff that you're looking at, if you consent to us
3 taking it, we could prosecute you with this stuff; isn't that
4 right?

5 A Yes.

6 Q And he was calm, cooperative and permitted you to take
7 what you needed; isn't that right?

8 A Yes.

9 Q And it also said that he had a right to withdraw his
10 consent any time during the inspection, isn't that correct?

11 A Yes.

12 Q So, as you were pulling Dr. Iandoli's scripts, for
13 example, or asked him for a profile, he could have said, you
14 know what? I've had enough, I'd like to speak to a lawyer,
15 please leave.

16 He could have done that and withdrawn his consent;
17 isn't that right?

18 A Yes.

19 Q And then you would have had to go to a judge, get a
20 warrant, and maybe you would have gotten one, maybe you
21 wouldn't have; isn't that right?

22 A Yes.

23 Q And he consented, and he was calm and cooperative; isn't
24 that right?

25 A Yes.

S. Loftus - Cross / Bachner

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1 Q Now, sir, during your meeting with Mr. Hossaini, you
2 inquired of him of approximately --

3 MR. BACHNER: Withdrawn.

4 Q He advised you, did he not, that in his pharmacy he
5 filled on a daily basis about 100 or 125 scripts a day; isn't
6 that correct?

7 A Yes.

8 Q Controlled and non-controlled substances?

9 A Yes.

10 Q And if we add up, if you use the easy number of 100 a
11 day, is 700 a week, times 52, is almost over 35,000 scripts a
12 year of controlled and non-controlled substances; right?
13 Eyedrops included, elixir, things of that nature?

14 A Yes.

15 Q And that's fairly busy; isn't it?

16 MS. RASULO: Objection.

17 MR. BACHNER: Withdrawn. Bad question.

18 Q On the hundred, if you're doing a hundred and let's say
19 you're open for ten hours, that's ten an hour; correct?

20 A Yes.

21 Q And there are 60 minutes in an hour. That means you're
22 doing one like, every six minutes; isn't that right?

23 A Yes.

24 Q And that's fairly busy; is it not?

25 MS. RASULO: Objection.

S. Loftus - Cross / Bachner

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1 Q In your experience as a --

2 THE COURT: Beyond the scope. Sustained.

3 Q Now, sir, is it also fair to say that while you were on
4 the premises, Mr. Hossaini showed you the fact and you
5 requested to see the fact that his pharmacy was registered?

6 A Yes.

7 Q And what I'd like to do, sir, is show you --

8 MR. BACHNER: I don't know if this is part of the
9 government's exhibits or not, so I'm marking it separately.

10 MS. RASULO: I have. I have it marked.

11 Do you prefer to use your own?

12 MR. BACHNER: Yes.

13 THE COURT: Quiet please, folks, if you're going to
14 confer.

15 MR. BACHNER: Sorry, Your Honor.

16 MS. RASULO: Sorry, Judge.

17 (Pause in the proceedings.)

18 MR. BACHNER: This will be E.

19 THE COURTROOM DEPUTY: We're up to Defendant's
20 Exhibit E.

21 MR. BACHNER: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 MR. BACHNER: Agent I'm going mark a document as
24 Defendant's Exhibit E, like Edward, and give you a copy.

25 (Hanging.)

S. Loftus - Cross / Bachner

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1 MR. BACHNER: And Your Honor, I actually have copies
2 for the Court this time. Here's five copies for the Court.

3 THE COURTROOM DEPUTY: Thank you.

4 MR. BACHNER: You're welcome.

5 One for the court reporter. I did it right it this
6 time, Judge.

7 Sir, I'd like to you look at Defendant's Exhibit E.

8 BY MR. BACHNER:

9 Q And does that look like the registered pharmacy license
10 that you saw, saw and seized a copy of in the pharmacy, on or
11 about I believe December 7th of '05?

12 A Yes.

13 MR. BACHNER: I move this in evidence, Your Honor.

14 THE COURT: Any objection to Defendant's Exhibit E?

15 MS. RASULO: No, Your Honor.

16 THE COURT: Received.

17 (Defendant's Exhibit E was received in evidence.)

18 MR. BACHNER: Sir, I'd like to you look at

19 Defendant's Exhibit E.

20 (The above-referred to exhibit was published to the
21 jury.)

22 BY MR. BACHNER:

23 Q And you see that this is issued by the New York State
24 Board of Pharmacy to Mr. Hossaini's pharmacy; isn't that
25 correct? Family Chemists, Inc. in Bayside?

1 A Yes.

2 Q Now, sir, if you might, do you see where it says this
3 certificate is effective on the 27th day of May, 2004?

4 Do you see that?

5 A Yes.

6 Q When does it expire?

7 A According to the certificate, it expires on the 30th day
8 of April, 2007.

9 Q Now, you were aware that Mr. Hossaini sold his pharmacy
10 on March 14th; isn't that correct?

11 A No, I did not know the date of --

12 Q Did you --

13 A -- sale for Mr. Hossaini's pharmacy.

14 Q I'm sorry.

15 Did you know it was in March?

16 A No, I did not.

17 Q Okay. Do you know how long, sir, it takes for a pharmacy
18 to get re-registered?

19 A No, I do not.

20 Q Now, sir, you testified that you went into the pharmacy
21 on or about December 7th and you asked Mr. Hossaini to give
22 you a patient profile of Dr. Iandoli's scripts; is that
23 correct?

24 A Yes.

25 Q And a patient profile is that list detailing all of the

1 patients that Mr. Hossaini had on his computer of where
2 Dr. Iandoli was listed as the physician; is that right?

3 A Yes.

4 Q Okay. And that profile extracts all the Iandoli names
5 from the mass that may exist on the computer of other names;
6 is that right?

7 A That was my understanding, according to what Mr. Hossaini
8 said to me on that day.

9 Q Okay. So, that list of Dr. Iandoli's scripts indicates
10 you asked for his dispensation records; is that right?

11 MR. BACHNER: Withdrawn.

12 Q Did you also ask for his dispensation records?

13 A I'm not familiar with the term.

14 Q Did you ask for records indicating the scripts that
15 Mr. Hossaini wrote on -- the scripts that Mr. Hossaini filled
16 on Dr. Iandoli-written scripts?

17 A We asked for the physician profile and patient profiles.

18 Q Now, do you know, sir, whether or not those dispensation
19 records reflect scripts written, but not filled?

20 A Mr. Hossaini produced the report and stated that it was
21 accurate.

22 Q You asked him -- I'm sorry?

23 A He said it was accurate, based on what he had dispensed.

24 Q So, he told you this was his dispensation, not a patient
25 profile of all scripts that Dr. Iandoli wrote?

1 A Dispensation wasn't a jargon term that he used.

2 Q The point I'm making, sir, is I am asking to think back
3 carefully.

4 Isn't it a fact that what you asked him for was a
5 patient profile of all prescriptions written by Dr. Iandoli or
6 on Dr. Iandoli's pad --

7 A Yes.

8 Q -- where he was the dispensing doctor?

9 You didn't ask him whether or not all of those
10 scripts were actually filled?

11 A Well, based on a reading of the actual profile, they have
12 been filled.

13 Q And why do you come to that conclusion?

14 A When you read the profile from left to right, on the
15 right-hand side it indicates payment type.

16 Q And do you know, sir, do you know whether Mr. Hossaini's
17 pharmacy when a patient comes in, do you know the procedure
18 that he uses at all when a patient presents a script?

19 A I only know the records that we asked for and that he
20 produced.

21 Q So, you don't know, for example, if the label on the
22 bottom of a script merely recites the prescription and what
23 the cost would be when filled?

24 A Can you repeat the question, please?

25 Q Sure.

1 You don't know, sir, on a script, when Mr. Hossaini
2 receives a script, there is a label on the bottom of the
3 script; is that correct?

4 A Yes.

5 Q And that label is generated by Hossaini's pharmacy; is
6 that correct?

7 A Yes.

8 Q Now, sir, isn't it a fact that you don't know as you sit
9 here today whether or not that script reflects a prescription
10 actually filled or whether that label reflects how much the
11 cost of that script would be if filled?

12 A The prescriptions that we reviewed were given to us and
13 we were instructed, we were informed by Mr. Hossaini, that
14 they represented filled prescriptions from his store.

15 Q That's your recollection now as you sit here today?

16 A Yes.

17 Q Now, sir, you told the jury that when you reviewed the
18 Iandoli scripts, you believed -- and the Court instructed the
19 jury that it's their job to come to conclusions -- but that it
20 looked to you like there was diversion?

21 A Yes.

22 Q Isn't that right?

23 A Yes.

24 Q Now, isn't it also a -- and what you're saying is it
25 looked to you as if these, some of these scripts may be

1 fraudulent?

2 A It looked as if the prescriptions had been filled at very
3 short intervals for the same controlled substance.

4 Q And that, of course, is assuming that, in fact, each of
5 those scripts was actually dispensed?

6 A Yes.

7 Q Now, you also, did you not, looked at thousands of other
8 scripts at the pharmacy; isn't that correct?

9 A I would say hundreds, yes.

10 Q Well, isn't it true that the DEA visited almost 60 other
11 doctors that Mr. Hossaini had done business with?

12 A I don't know.

13 Q Were you ever part of the team that interviewed any other
14 doctors?

15 A No.

16 Q Now, sir, were you also -- did you also have a
17 conversation on December 7th of '05 with Mr. -- did you have a
18 conversation on December 7th of '05 with Mr. Hossaini
19 regarding a fellow named Vecchio?

20 A We asked for the patient profiles of a Mr. Vecchio.

21 Q And on December 7th of '05, did you also ask Mr. Hossaini
22 whether or not he had any information about fraudulent
23 scripts?

24 A Mr. Hossaini indicated that he had a prescription that he
25 felt may have been fraudulent and he made an annotation on the

1 back of that prescription.

2 Q Okay. And he actually pinned it onto the wall in his
3 pharmacy; didn't he? Behind the counter?

4 A I didn't observe that.

5 Q And he gave you two scripts he thought were fake; isn't
6 that right?

7 A I don't recall two. I recall one.

8 Q And is it fair to say, sir, that he told you at that time
9 that he had been visited by a fellow named James Sferrazza?
10 Isn't that right?

11 MS. RASULO: Objection.

12 THE COURT: Come to the sidebar, please.

13 (Sidebar.)

14

15 (Continued on following page.)

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Sidebar

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1 (Sidebar.)

2 THE COURT: The question calls for hearsay. Which
3 is all well and good. So, I'll sustain the objection, but I
4 don't want to do it with this witness.

5 What do we do about the last witness? I gave you a
6 lot of latitude.

7 MR. BACHNER: Your Honor, he was one of the agents.
8 And our opinion, Your Honor, is that it's not for the truth of
9 the matter. The conversation that we believe that --
10 withdrawn.

11 There already is a script in evidence, a Dr. Iandoli
12 script that he seized that has James Sferrazza came to speak
13 to me, you know, and kind of details the conversation --

14 THE COURT: What does?

15 MR. BACHNER: -- that I want to go through.

16 In other words, the defendant wrote down in the back
17 of one of the scripts from Iandoli James Sferrazza. I'm not,
18 it's not verbatim, Your Honor, but James Sferrazza came to see
19 me, told me that his cousin Richard Giacalone may have stolen
20 scripts and he had Giacalone's telephone number and he wrote
21 it on the back.

22 THE COURT: But with due respect, that's not an
23 adequate statement offered for the truth.

24 So, that's my ruling on that question, but I'm going
25 to hold you, you're going to have a chance to put on your

Sidebar

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1 defense case. I'm going to hold you to a shorter tether here.
2 I want you to know that.

3 MR. BACHNER: Your Honor, I appreciate that.

4 It's really not for the truth. It's for the fact
5 that Mr. Hossaini said it. He has no idea that Mr. Sferrazza
6 said it. He doesn't know whether it's true or not. He merely
7 reported it.

8 MS. RASULO: Your Honor, he is putting it in for the
9 truth.

10 THE COURT: It has no relevance in and of itself
11 that he said it. The only relevance that it has is if it's
12 true.

13 MR. BACHNER: No, even if it were false, it showed
14 that he reported it. I want to show that he's reported
15 something to the DEA, regardless of whether it was true or
16 not.

17 MS. RASULO: That's not relevant.

18 THE COURT: Well, it is relevant if that's the sole
19 point; that he reported this on a timely basis to the DEA.

20 MR. BACHNER: Because Sferrazza is going to testify
21 about the conversation regardless.

22 THE COURT: Okay. I stand corrected. Fair enough.
23 (Sidebar end.)

24

25 (Continued on following page.)

Proceedings

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1 (In open court.)

2 (Pause in the proceedings.)

3 MS. RASULO: Your Honor, could we be reheard?

4 THE COURT: Reheard?

5 MS. RASULO: Yes, please.

6 THE COURT: Come on up. Motion for re-hearing.

7 (Sidebar.)

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9 (Continued on following page.)

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Sidebar

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1 (Sidebar.)

2 THE COURT: Go ahead.

3 MS. RASULO: Your Honor, partially I'm confused with
4 respect to the scope of what he's actually offering the
5 statement for.

6 If it's just for the limited purpose of saying that
7 he reported something to the DEA, then we want a limiting
8 instruction with respect to that. But the fact that he had a
9 prior good act doesn't go --

10 THE COURT: What do you want a limiting instruction
11 for if Sferrazza going to testify to this conversation?
12 What's the point?

13 MR. BACHNER: Your Honor, I'll elicit from the agent
14 that 'you have no idea this information is true or false, just
15 that it was reported'.

16 MS. RASULO: It's not at all clear, Your Honor, how
17 Sferrazza's going to be testifying to this if it's put through
18 the defense case. He's again going to be offering hearsay
19 statements that are offered for the truth.

20 THE COURT: What statements are we talking about?

21 MS. RASULO: Statements where Sferrazza went to
22 Family Chemists and said stop filling these prescriptions for
23 this individual, the man who testified previously saying, you
24 know, they're fraudulent, don't fill them. And his name is
25 Richard Giacalone.

Sidebar

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1 THE COURT: And you're offering proof that that was
2 reported on a timely basis by your client.

3 MR. BACHNER: I will offer proof, Your Honor, now
4 that on the back of one of the Iandoli scripts that is already
5 in evidence is the notation about that by Mr. -- by the
6 defendant. And there's actually a notation on the corner of
7 it, which I believe he will be able to identify is a DEA agent
8 saying defendant said this is fake.

9 THE COURT: I don't have any difficulty with it.
10 Go ahead.

11 (Sidebar end.)

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13 (Continued on following page.)

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1 (In open court.)

2 CROSS-EXAMINATION

3 BY MR. BACHNER: (Continued)

4 Q Agent, taking you back again to December 7th.

5 There came a time that Mr. Hossaini gave you a
6 script, did he not, that he believed was fake? Or that he
7 told you was fake?

8 A We copied a prescription that he believed had been
9 fraudulent.

10 Q And you don't know whether or not at that point it was
11 fake or not fake; isn't that right?

12 A That's correct.

13 MR. BACHNER: And sir, what I would like to show you
14 is Defendant's Exhibit F, which is a piece of Government's
15 Exhibit 16, which is a script extracted from Government's
16 Exhibit 16.

17 (Pause in the proceedings.)

18 MR. BACHNER: May I approach, Judge?

19 THE COURT: Go ahead.

20 Q I'm going ask you, sir, if you recognize this as the
21 script that Mr. Hossaini gave you on that day?

22 (Handing.)

23 A Yes.

24 MR. BACHNER: I move this into evidence, Your Honor,
25 as Defendant's Exhibit F.

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1 I have to make copies of this, Your Honor. They're
2 part of the Government's Exhibit.

3 THE COURT: Any objection?

4 MS. RASULO: No, Your Honor.

5 THE COURT: Received, F as in Frank, in evidence.

6 (Defendant's Exhibit F was received in evidence.)

7 MR. BACHNER: Sir, I would like to show you the
8 front page of F.

9 (The above-referred to exhibit was published to the
10 jury.)

11 Q It says "Gerri Vecchio, pharmacist".

12 Do you see writing on the top, "pharmacist said fake
13 script"?

14 A Yes.

15 Q Do you know whose handwriting that is?

16 A No, I don't.

17 Q Do you see where it says, "no answer by the telephone"?

18 A Yes.

19 Q And did Mr. Hossaini have a conversation with you where
20 he told you he tried to call Iandoli, but there was no answer?

21 A He stated that he had made an effort to call, yes.

22 Q Now, sir, if you go to the back of the script, do you see
23 where it says -- try and read that sir, if you can.

24 A "Fake prescription, cousin of patient came in"...

25 Q And? Let me see. I'm going read it. You tell me if you

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1 agree with it.

2 "Cousin of patient came in and said he works at a
3 print press. MD asked to make copies. He stole pad. Real
4 name is Richard Giacolone. Cousin is James Sferrazza. (718)
5 939-5308".

6 Do you see that?

7 A Yes.

8 Q Now, did you, sir, reach out to, as a result of receiving
9 this, reach out to James Sferrazza?

10 A No, my brief that day was to merely review prescriptions,
11 make copies, and then turn them over to Diversion Investigator
12 Jaramillo.

13 Q Okay. So, sir, just moving on to the audit.

14 Did you count -- what did you count?

15 A We didn't conduct an audit. It was an inventory.

16 Q What inventory did you count?

17 A We counted hydrocodone and oxycodone products present at
18 Family Chemists on February 28th, 2007.

19 Q Sir, did you count all controlled substances?

20 A No. Only hydrocodone and oxycodone products.

21 Q Sir, on the diagram --

22 MR. BACHNER: I'll be finished before 1:00 o'clock,
23 Your Honor.

24 (The above-referred to exhibit was published to the
25 jury.)

1 Q Sir, on the diagram there is a, you've described for the
2 jury the diagram over here and there is, do you see that it
3 says -- do you see where it says, "white closet"?

4 A Yes.

5 Q And "sterile area"?

6 A Yes.

7 Q Did you go into the white closet?

8 A I did not.

9 Q Did you go into the sterile area?

10 A No.

11 Q Did you see, sir, in the store a large pill-making
12 machine for compounding of pills?

13 A I don't recall seeing a tablet press.

14 Q Did you ask Mr. Hossaini whether or not he stored in the
15 sterile area a pill-making machine where there were
16 hydrocodone maintained?

17 A I did not ask him that.

18 Q And did you ask to look in the sterile area?

19 A I did not.

20 Q And what you asked to see, sir, was to count the
21 hydrocodone and oxycodone that were on the shelves?

22 A I was there to conduct an inventory of all oxycodone and
23 hydrocodone product inside that registered location. So, all
24 of each of those controlled substances was what I was there to
25 inventory.

1 Q Do you know, sir, were you clear to the best of your
2 recollection, I know this was three years ago, were you clear
3 with Mr. Hossaini that you wanted to see oxycodone and
4 hydrocodone that he was dispensing to customers as compared to
5 oxycodone and hydrocodone that he had on premises that was not
6 for dispensation, but was for research?

7 A We were very clear with Mr. Hossaini that we needed to
8 see all oxycodone and hydrocodone products in any form at the
9 registered location at that time. Whatever was inside those
10 four walls we needed to see and count.

11 Q Why didn't you go into the sterile area?

12 A Mr. Hossaini, being the DEA registrant and the owner of
13 the pharmacy is best qualified to retrieve all oxycodone and
14 hydrocodone products from inside his own facility.

15 MR. BACHNER: Thank you very much, Agent.

16 Before I say anything, I just want to speak with my
17 client.

18 (Pause in the proceedings.)

19 MR. BACHNER: Thank you, Agent. Nothing else.

20 THE COURT: Anything else?

21 MS. RASULO: No, Your Honor.

22 THE COURT: All right.

23 MS. RASULO: Your Honor?

24 THE COURT: Yes, ma'am?

25 MS. RASULO: May we have a sidebar?

S. Loftus - Cross / Bachner

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1 THE COURT: Are you done with this witness?

2 MS. RASULO: Yes.

3 THE COURT: You may step down, sir.

4 (Witness excused.)

5 THE COURT: Ladies and gentlemen, enjoy your lunch.

6 We will resume at 2:00 sharp.

7 MS. RASULO: Judge, actually, I have one more
8 witness that has a time limitation.

9 THE COURT: Is that your problem?

10 MS. RASULO: Yes.

11 THE COURT: Bring him in. Or her in.

12 MS. RASULO: Yes.

13 THE COURT: I won't cheat you on your lunch, I
14 promise.

15 MS. RASULO: The Government calls Dr. Robert Duarte
16 to the stand.

17 (Pause in the proceedings.)

18 (Witness enters and takes stand.)

19 THE COURTROOM DEPUTY: Okay, sir. I'm going to ask
20 you please to take the stand, and I'm going to swear you in.

21 Please, raise your right hand.

22

23 DR. ROBERT DUARTE,

24 called by the Government, having been

25 first duly sworn, was examined and testified

R. Duarte - Direct / Rasulo

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1 as follows:

2

3 THE COURTROOM DEPUTY: Have a seat. Please, state
4 your full name and spell it for the record.

5 THE WITNESS: Robert Duarte, D-U-A-R-T-E.

6 DIRECT EXAMINATION

7 BY MS. RASULO:

8 Q What kind of medicine do you practice, Dr. Duarte?

9 A I'm a neurologist that has a sub-specialty in pain and
10 headache.

11 Q And how long have you been practicing for?

12 A For approximately 19 years.

13 Q And where were you practicing in 2005 and 2007?

14 A North Shore Long Island Jewish Health System.

15 Q And that's on Long Island?

16 A On Long Island.

17 Q And as part of your practice, do you prescribe
18 hydrocodone?

19 A Yes.

20 Q And can you describe your prescribing practices for the
21 jury?

22 A Well, typically, hydrocodone is a short acting agent that
23 we give patients and often it's in patients that have usually
24 moderate to severe pain.

25 Q And how do you prescribe hydrocodone?

R. Duarte - Direct / Rasulo

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1 A Well, there are different doses that I use. So, I'll
2 either use what's called a 5 milligram dosage or the 7.5, and
3 you can go up to 10 milligrams.

4 Q And what about oxycodone? Do you prescribe that as well?

5 A Oxycodone as well, yes.

6 Q And how do you prescribe oxycodone?

7 A Well, that's another that's a short-acting and then
8 there's OxyContin, which is a long-acting. And it depends on
9 the severity of the pain and it depends on the ability for the
10 patient to function or not function.

11 Q And you prescribe OxyContin?

12 A Yes.

13 Q And when you prescribe it, what strength or dosage, what
14 strength of the pill do you prescribe?

15 A Again, it varies on the intensity of the pain and the
16 nature of the problem, but it can range from 10 milligrams,
17 20 milligrams, 40 milligrams, 80 milligrams. It depends on
18 again, the severity of the pain.

19 MS. RASULO: Your Honor, permission to approach?

20 THE COURT: Yes, ma'am.

21 MS. RASULO: The Government's showing you what
22 what's in evidence as 16P.

23 (Hanging.)

24 MS. RASULO: Just keep them in order. Let me know
25 when you're finished.

R. Duarte - Direct / Rasulo

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1 THE WITNESS: Oh, okay.

2 (Pause in the proceedings.)

3 MR. BACHNER: Ms. Rasulo, is that B or V like
4 Victor?

5 MS. RASULO: It's actually P as in Paul.

6 MR. BACHNER: Thank you.

7 (Pause in the proceedings.)

8 MS. RASULO: You can give those back to me.

9 (Handing.)

10 Q Doctor, do you recognize Government's Exhibit 16P?

11 A Well, I looked at a few of the prescriptions. So, yes,
12 if that's...

13 Q Now, are these your prescriptions?

14 A They are on -- they're in my prescription pad with
15 letterhead on them, yes.

16 Q And did you complete these prescriptions?

17 A The one prescription on the top does not look like my
18 full -- the number I had written on it originally.

19 (The above-referred to exhibit was published to the
20 jury.)

21 Q Doctor, is this the prescription that you're referring
22 to?

23 A Yes.

24 Q And can you explain to the jury what you had indicated
25 with respect to this prescription?

R. Duarte - Direct / Rasulo

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1 A It's that the 80 milligrams, it looks like what I had
2 written there is a 10 milligram.

3 Q So, you had prescribed a 10 milligram as opposed to an 80
4 milligram?

5 A Yes.

6 Q And who is this patient, Pearl Hendler?

7 A This is a patient of mine that I had seen for chronic
8 pain.

9 Q And how old is she approximately?

10 A It says here 80 and I think she's approximately that age.

11 Q And do you recall your prescribing practices with respect
12 to Ms. Hendler?

13 A I recall the patient and I recall the sort of the degree
14 of pain, and she had sort of a moderate pain.

15 Q Would you prescribe 80 milligrams of OxyContin for her?

16 A In this woman, no, I did not. After reviewing my record,
17 too, I -- she was not someone that required that high of a
18 dose.

19 Q And you reviewed your records, Doctor?

20 A Yes.

21 Q Were you able to find a copy of the original
22 prescription?

23 A Yes.

24 MS. RASULO: Permission to approach, Your Honor?

25 THE COURT: Go ahead.

R. Duarte - Direct / Rasulo

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1 MS. RASULO: The Government is showing you what's
2 been marked for identification. It's Exhibit 33.

3 (Hanging.)

4 MS. RASULO: If you could review that, Doctor, and
5 let me know when you're finished.

6 (Pause in the proceedings.)

7 THE WITNESS: Okay.

8 (Hanging.)

9 Q Do you recognize Government's Exhibit 33?

10 A Yes, I do.

11 Q And what is it?

12 A It's OxyContin, 10 milligrams.

13 Q Is this a copy of the prescription that you were able to
14 retrieve from Ms. Hendler's patient file?

15 A Yes.

16 MS. RASULO: Your Honor, the Government moves
17 Exhibit 33 into evidence.

18 MR. BACHNER: No objection, Your Honor.

19 THE COURT: Received.

20 (Government's Exhibit 33 was received in evidence.)

21 (The above-referred to exhibit was published to the
22 jury.)

23 MS. RASULO: I'm going to show you the bottom
24 prescription.

25 Q And this is a copy of the prescription from Ms. Hendler's

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1 file; is that correct?

2 A Yes, it is.

3 Q And on this copy it says it's a 10 milligram
4 prescription; is that correct?

5 A Yes, 10 milligrams.

6 MS. RASULO: I have no further questions.

7 THE COURT: Mr. Bachner, any questions for
8 Dr. Duarte?

9 MR. BACHNER: Yes.

10 CROSS-EXAMINATION

11 BY MR. BACHNER:

12 Q Good afternoon, Doctor. How are you?

13 A Okay.

14 Q Doctor, have we ever spoken?

15 A No.

16 Q Did you ever get notified by your secretary that someone
17 from my office called to speak with you?

18 A Yes, I did.

19 Q And did you get several beeps from a number that you
20 didn't recognize that you didn't call back?

21 A A beep? I don't know about a beep.

22 Q Is there a reason you didn't return the phone call to our
23 office?

24 A I had that one phone call. I did not get any beep. I
25 did not return the phone call. I just did not think that I

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1 needed to make a phone call returned.

2 Q All right. Is it that you didn't want to speak to
3 defense counsel?

4 A That was my impression, yeah.

5 Q Were you instructed not to speak to defense counsel?

6 A No, I was not.

7 Q Now, Doctor, Ms. Hendler is approximately 80 years old;
8 is that correct?

9 A Yes.

10 Q Do you know if she altered this script?

11 A I do not know if she altered that prescription.

12 Q Now, sir, this...

13 (Pause in the proceedings.)

14 (The above-referred to exhibit was published to the
15 jury.)

16 Q This script was paid for through insurance; wasn't it?

17 A I don't know.

18 Q Do you see where it says "ADV"? Do you know if that's
19 insurance?

20 A Where is that? Where are you?

21 Q I'm sorry, Doctor. Right over here (indicating).

22 A I don't know any of that information at all. I don't
23 know what that means.

24 Q You just want to get paid, you don't really care how?

25 A Excuse me?

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1 Q You just want to get paid for your work. I understand.

2 A No --

3 MS. RASULO: Objection.

4 THE COURT: Sustained.

5 Next question.

6 MR. BACHNER: I didn't mean that in a derogatory
7 way.

8 THE COURT: I know. Sustained.

9 Next question.

10 Q Sir, you, during the course of your work, you worked at
11 Long Island Jewish; did you not?

12 A I still do, yes.

13 Q And back in '05, did you also work in any other
14 locations? Were you at Stars Rehab?

15 A Stars Rehab as well.

16 Q And were you at Transitions of Long Island?

17 A Yes, in the same building as where I work now.

18 Q And were you also an assistant professor of neurology at
19 Albert Einstein?

20 A I still am.

21 Q And were you also an accredited member of the Council of
22 Graduate Medical Education?

23 A Yes.

24 Q And were you also a member of numerous professional
25 societies?

1 A Yes.

2 Q And did you also write books and chapters on pain and
3 brain injuries and related topics?

4 A Chapters.

5 Q Chapters. I'm giving you more credit. Chapters.

6 A Yes.

7 Q And also you also the doctor for the St. Francis Prep's
8 football team?

9 A Yes.

10 Q It sounds like you're a pretty active doctor?

11 A Yes.

12 Q Now, sir, during the course of your day, how often are
13 you in the office?

14 A Pretty much I'm in the office every day. There is, it
15 depends on which office you speak of, but generally I'm in my
16 main office approximately four days out of the week.

17 Q And if you were called by a pharmacist and were not in
18 one of your offices, what is the situation if the pharmacist
19 called to okay a script? What would you, what would the
20 process be in your office?

21 A In general they're not allowed to. In general,
22 especially if that's any kind of controlled substance they are
23 not allowed to.

24 Q And when you say "in general", there are exceptions?

25 A For non-controlled substances. But in general, they are

1 not allowed to and we -- pretty much because they are not
2 professionals to be able to do that.

3 Q And sir, in connection with the, in connection with this
4 script, do you have any independent knowledge as to whether or
5 not a pharmacist called your office?

6 A I have no -- no, I do not.

7 (Pause in the proceedings.)

8 Q Sir, also, is it fair to say that -- I noticed on these
9 scripts some of these scripts that --

10 MR. BACHNER: Withdrawn.

11 Q In your experience, have you ever filled out a script in
12 which you did not put down the patient's address?

13 A Yes, I have.

14 Q Okay. And is that fairly common?

15 A That's common.

16 Q I'm sorry, I just want to understand one other thing and
17 then we'll break.

18 When you, what were the circumstances under how this
19 script was received by the pharmacy, if you know? How it was
20 communicated to the pharmacy.

21 Did you call it in? Did you give Ms. Hendler the
22 script? What did you do?

23 A I typically give the patient the prescription.

24 Q And do you recall if that's what you did in this
25 circumstance or not? Do you have independent knowledge?

R. Duarte - Redirect / Rasulo

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1 A I don't have independent knowledge, but that's what's
2 done on any prescription that is a controlled substance.

3 Q Are you aware of any controlled substance that you can
4 orally call in a script?

5 A Can you repeat that?

6 Q You can call in a script to a pharmacy as well?

7 A Typically for a three- or five-day prescription.
8 Emergency prescription.

9 Q Right. So, what you're saying is, you don't have any
10 independent recollection of this, but that's generally how you
11 do it?

12 A Right.

13 MR. BACHNER: I am finished, Your Honor, and I want
14 to apologize again if that remark came out in any way as other
15 than bad humor. I apologize.

16 MS. RASULO: Your Honor, just one question.

17 THE COURT: Go ahead.

18 REDIRECT EXAMINATION

19 BY MS. RASULO:

20 Q Dr. Duarte, do you know where Paula Hendler is now?

21 A I think she may be in an assisted living program? You
22 know, I'm not a hundred percent sure right at this point.

23 Q And did you receive -- do you recall receiving a phone
24 call requesting to change this prescription from a
25 10 milligram to an 80 milligram OxyContin prescription?

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1 A Not at all.

2 MS. RASULO: No further questions.

3 THE COURT: All right.

4 Thank you, Dr. Duarte.

5 THE WITNESS: You're welcome.

6 THE COURT REPORTER: You're excused.

7 (Witness excused.)

8 THE COURT: Ladies and gentlemen, you are excused

9 until 2:10. Do not discuss the case. Enjoy your lunch.

10 THE COURTROOM DEPUTY: All rise.

11 (Jury is excused.)

12 (Continued on following page.)

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Proceedings

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1 (The following occurs outside the presence of the
2 jury.)

3
4 THE COURT: Who's next?

5 MS. RASULO: I'm going to call, I believe, John
6 Osborn, our handwriting expert, after lunch.

7 THE COURT: Okay. And then?

8 MS. RASULO: Then, Jennifer Zaltsman. I know we
9 have a short period, Judge. And I have a doctor as well.

10 THE COURT: All right.

11 MR. BACHNER: Your Honor, I'm sorry --

12 MS. RASULO: And perhaps Mr. Genchi as well.

13 MR. BACHNER: Your Honor, I just thought, I just
14 wanted to clarify for a second -- first of all, I want to
15 apologize to the Court. I apologized to the witness enough,
16 but it wasn't intended the way it came out.

17 THE COURT: Enough said. Go ahead.

18 MR. BACHNER: Your Honor, regarding the remark the
19 testimony by the agent that I objected to. The purpose of
20 that objection was that he had given his professional opinion
21 that the defendant was guilty --

22 THE COURT: Well --

23 MR. BACHNER: -- of diversion.

24 THE COURT: -- not quite so far, but I understand.

25 THE WITNESS: That a diversion occurred.

Proceedings

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1 THE COURT: But a diversion doesn't necessarily mean
2 the pharmacist is culpable. But go ahead, make your record.

3 MR. BACHNER: That was my concern; that the jury
4 would get the feeling, would get the understanding that the
5 agent had testified that in his opinion the defendant was
6 guilty. And I appreciate that Your Honor gave an instruction
7 to try to clarify, but that was the concern.

8 THE COURT: I understand.

9 MR. BACHNER: I hope that testimony, maybe we can
10 avoid giving professional opinions as to whether --

11 THE COURT: I think we're done with the experts and
12 hopefully, we're done with the opinions by nonexperts.

13 I think it was fairly innocuous the way it came out.
14 Hopefully, it was addressed immediately by the Court. I
15 understand your concern.

16 MR. BACHNER: Thank you, Your Honor.

17 MS. RASULO: Thank you, Judge.

18 (Recess taken.)
19
20

21 (Continued on following page with AFTERNOON
22 SESSION.)
23
24
25

1 AFTERNOON SESSION

2 (Open court.)

3 (Judge Dearie takes the bench.)

4 THE COURT: Let's bring in the jury.

5 COURTROOM DEPUTY: All rise.

6

7 (Jury enters the courtroom.)

8

9 THE COURT: Please be seated, everyone. Please
10 announce your next witness.

11 MS. RASULO: The Government calls Dr. Michael
12 Glasser to the stand.

13 COURTROOM DEPUTY: Doctor, I'm going to ask you,
14 please, to stand and raise your right hand.

15

16 DR. MICHAEL GLASSER,

17 called by the Government, having been first duly
18 sworn, was examined and testified as follows:

19

20 COURTROOM DEPUTY: Please have a seat.

21 State and spell your name for the record.

22 THE WITNESS: Michael Glasser, M-I-C-H-A-E-L
23 G-L-A-S-S-E-R.

24

25

Dr. M. Glasser - Rasulo / Direct

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1 DIRECT EXAMINATION

2 BY MS. RASULO:

3 Q Good afternoon, Dr. Glasser.

4 What kind of medicine do you practice?

5 A Internal medicine.

6 Q How long have you been practicing for?

7 A I graduated in '91. So since '95.

8 Q Where were you practicing in 2005?

9 A At Murray Hill Medical Group, East 34th Street.

10 Q That's in Manhattan?

11 A Manhattan.

12 Q Do you prescribe oxycodone or hydrocodone as part of your
13 practice?

14 A Rarely.

15 Q What do you mean by rarely?

16 A I try to avoid using stronger narcotics, but on occasion,
17 I have written a prescription for them.

18 Q Why do you try to avoid using stronger narcotics?

19 A I try to avoid the addictive medicines as much as
20 possible.

21 Q Do you prescribe OxyContin?

22 A I think in my career, I may have written it once or
23 twice.

24 Q Have you ever had any prescriptions stolen, doctor?

25 A Yes.

Dr. M. Glasser - Rasulo / Direct

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1 Q Can you describe that experience?

2 A I have had several prescription pads stolen from my
3 office, I believe 2004. It was reported to the DEA at the
4 time.

5 MS. RASULO: Permission to approach, your Honor.

6 THE COURT: Yes, ma'am.

7 Q I'm showing you what has been admitted into evidence as
8 Government's Exhibit 16J.

9 THE COURT: 16A?

10 MS. RASULO: J as in John.

11 THE COURT: Thank you. In evidence.

12 BY MS. RASULO:

13 Q If you can take a look at these, doctor, and keep them in
14 order.

15 (Hanging.)

16 Let me know when you're finished.

17 A (Perusing document.)

18 Yes.

19 Q Thank you, doctor.

20 Now, doctor, do you recognize the prescriptions in
21 Government's Exhibit 16J?

22 A The prescriptions themselves, yes.

23 Q What about the writing on the prescriptions?

24 A No.

25 Q So none of these are yours?

Dr. M. Glasser - Rasulo / Direct

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1 A None of those are mine.

2 Q They're not your handwriting?

3 A No.

4 Q The individuals in the patient name section of these
5 prescriptions, are these your patients?

6 A I do not recognize any of the names on the pads.

7 The signator is not mine.

8 Q And all of these prescriptions appear to be for OxyContin
9 80 milligrams; is that right?

10 A Correct.

11 I also just want to note the DEA number on them is
12 incorrect as well.

13 Q And it appears that there are approximately 17
14 prescriptions in here from January 4th, 2005 to March 15th,
15 2005; is that correct?

16 A Yes.

17 Q Doctor, I'm going to direct your attention to
18 prescriptions, according to the dispensing label, from January
19 20th, 2005.

20 (The above-referred to exhibit was published to the
21 jury.)

22 Q Doctor, it appears that I have five prescriptions for you
23 from January 20th, 2005.

24 Does that sound correct to you?

25 A From the stack that you gave me, I actually didn't pay

Dr. M. Glasser - Rasulo / Direct

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1 attention to the number.

2 THE COURT: We'll take your representation. They're
3 in evidence. Go ahead.

4 MS. RASULO: Thank you, judge.

5 BY MS. RASULO:

6 Q I want to show you this first one. This looks like it's
7 for a patient Belinda Garvey; is that correct?

8 A Correct.

9 Q And you're saying DEA number, is this this number to the
10 left of the prescription, appears to be incorrect?

11 A Correct. That's an incorrect number.

12 Q It looks like the sticker is over your signature, but
13 over the signature area.

14 A I can see through the sticker, and that's not my
15 signature.

16 Q And this is not your handwriting?

17 A No.

18 Q Doctor, do you recall being called about this
19 prescription for verification?

20 A No.

21 Q Again, you don't recall receiving any phone calls
22 regarding this prescription?

23 A No.

24 Q I'm also going to show you another prescription from that
25 day.

Dr. M. Glasser - Rasulo / Direct

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1 (The above-referred to exhibit was published to the
2 jury.)

3 Q Again, is Felix Smith your patient?

4 A No, he is not.

5 Q And it again appears to be written for OxyContin 80
6 milligrams?

7 A Correct.

8 Q I believe it reads "Common - MD always writes for
9 OxyContin must call."

10 Do you see that?

11 A I see that.

12 Q Did you ever receive a call, doctor, about this
13 prescription?

14 A No, I did not.

15 Q Doctor, I'm going to show you two prescriptions from the
16 same day.

17 (The above-referred to exhibit was published to the
18 jury.)

19 Q I'd like you to look at the signature areas.

20 Do these signatures appear to be the same?

21 A No. Neither one of those are my signature, and again,
22 the DEA number is incorrect on both of those.

23 Q And neither Samantha Young or Marvin Grant are your
24 patients?

25 A Correct, neither of them are my patients.

Dr. M. Glasser - Bachner / Cross

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1 Q And again the date is January 20th, 2005 on the
2 dispensing labels?

3 A Yes.

4 MS. RASULO: I have no further questions.

5 THE COURT: All right. Mr. Bachner.

6 CROSS-EXAMINATION

7 BY MR. BACHNER:

8 Q Good afternoon, doctor.

9 A Good afternoon.

10 Q Doctor, you are part of the Murray Hill Medical Group; is
11 that correct?

12 A Correct.

13 Q How many people are in that group?

14 A Physicians?

15 Q Doctors, I'm sorry.

16 A Approximately currently 30.

17 Q What is the process for verification of scripts from
18 pharmacists at your group?

19 A The pharmacist calls. Secretary forwards the phone
20 conversation to us, and then we document in the chart all
21 phone messages.

22 Q When you say us, to the physician?

23 A To the individual physician.

24 Q And if the individual physician is unavailable?

25 A If the individual physician is unavailable, the covering

1 physician will document.

2 Q So it's possible then, sir, that if someone were to call
3 on a prescription and you're not available, it would be
4 forwarded over to another doctor whose responsibility would be
5 to verify the information; is that correct?

6 A It's possible.

7 Q Is it also possible at your practice, and when I say
8 possible, does the individual responsible, the office
9 administrator, for answering phones at your group have the
10 right or the authority, if a physician is unavailable and
11 there is a need to verify a script, to, on her own or his own,
12 to look into the computer system to verify the existence or
13 nonexistence of a particular script?

14 A If the doctor is not available, we have electronic
15 medical records, and all prescriptions are recorded. So she
16 can verify whether it was written or not.

17 MR. BACHNER: Thank you, sir. No other questions.
18 Thank you, very much, doctor.

19 THE COURT: Thank you.

20 Anything else?

21 MS. RASULO: No, your Honor.

22 THE COURT: Thank you, Dr. Glasser. You're excused.
23 Step down.

24 (The witness leaves the witness stand.)

25 THE COURT: Next witness.

J. Osborn - Rasulo / Direct

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1 MS. RASULO: The Government calls John Osborn.

2 (John Osborn enters the courtroom and takes the
3 witness stand.)

4 COURTROOM DEPUTY: I'm going to ask you to raise
5 your right hand.

6

7 JOHN OSBORN,

8 called by the Government, having been first duly
9 sworn, was examined and testified as follows:

10 COURTROOM DEPUTY: Please have a seat.

11 State and spell your name for the record.

12 THE WITNESS: My name is John Paul Osborn, last name
13 is spelled O-S-B-O-R-N.

14 DIRECT EXAMINATION

15 BY MS. RASULO:

16 Q Good afternoon, Mr. Osborn.

17 A Good afternoon.

18 Q How are you employed?

19 A I am self-employed as a forensic document examiner in a
20 family practice in New Jersey.

21 Q What did you say it was, a forensic document practice?

22 A Forensic document examiner.

23 Q What does that mean, forensic document examiner?

24 A Forensic document examiner is an individual that studies
25 evidence and attempts to render determinations with regard to,

J. Osborn - Rasulo / Direct

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1 virtually, any kind of physical evidence that appears
2 typically on documents. That would include the examination of
3 handwriting and hand printing, signatures, writing inks. It
4 would also include the products of mechanical document
5 production, devices like photocopiers, typewriters, computer
6 peripherals, printers, and it also includes things like the
7 examination of altered or obliterated writing, includes the
8 examination of paper, just about anything having to do with
9 documents except for examinations which require chemical
10 analysis.

11 Q How long have you been a forensic document examiner?

12 A I've been doing this work on a full-time basis for 26
13 years.

14 Q What is your formal education?

15 A I have a bachelor's degree in communications from
16 Susquehanna University, which is in Pennsylvania.

17 Q What specialized training have you completed?

18 A As is typical in this particular field, which is a fairly
19 narrow specialty, my training was under the supervision of
20 another document examiner in a two-year full-time
21 apprenticeship beginning in 1982 and ending in 1984. The
22 supervisor in my training was my father, the late Paul Osborn.

23 Q Can you give the jury some examples of the texts that
24 you've relied on in your training?

25 A "Questioned Documents", "The Problem of Proof", and

J. Osborn - Rasulo / Direct

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1 "Questioned Document Problems", which were all three were
2 written by Albert S. Osborn. "Scientific Examination of
3 Questioned Documents" by Ordway Hilton, "Evidential Documents"
4 by James Conway, and there are several others.

5 Q What professional organizations do you belong to?

6 A I'm a member, former director and former treasurer of the
7 American Society of Questioned Document Examiners, the
8 American Academy of Forensic Science, the Northeastern
9 Association of Forensic Scientists, the New Jersey Association
10 of Forensic Scientists, and the American Society For Testing
11 and Materials, which is a standard publishing organization.

12 Q Have you taught or lectured about forensic document
13 examination?

14 A Well, in terms of presenting research to the various
15 organizations whose primary purpose is the dissemination of
16 research, yes.

17 I've also done things like traveled throughout the
18 state of New Jersey lecturing to high school students in
19 forensic science classes, but no formal college lectures.

20 And then I've appeared in training sessions for
21 organizations like the continuing education program from the
22 New York DA's office and bar associations, that sort of thing.

23 Q Have you testified before as an expert witness in
24 forensic document examination?

25 A Yes.

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1 Q Approximately how many times?

2 A Approximately two hundred times.

3 Q In which courts have you testified? You don't have to
4 list all that you have.

5 A In the federal courts, the Eastern and Southern Districts
6 of New York, as well as the Northern District of Illinois,
7 Central District of California and the District of New Jersey,
8 and then state courts, most state courts throughout the state
9 of New York and superior courts throughout the state of New
10 Jersey, administrative law courts, surrogates courts.

11 Q And do the documents that you examine always require that
12 you testify?

13 A No. Only about ten percent of the cases that I examine
14 actually require testimony. Some cases, in some way, shape or
15 form, are resolved before testimony is necessary. Some cases
16 don't involve litigation at all, like corporate security
17 problems. Many of the cases that I examine, the
18 determinations that I make are unfavorable to the party that
19 I'm working for. So in most of those cases, I'm not asked to
20 testify.

21 Q Are you certified in your field of expertise by a
22 nationally recognized certifying body?

23 A Yes. I was tested and certified between the years 1987
24 and 1990 by the American Board of Forensic Document Examiners,
25 which is a three-part testing process to establish competence

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1 after the initial apprenticeship was completed and was
2 accepted by a board certified examiner in 1990, re-certified
3 in 1995, 2000, and most recently in 2005.

4 MS. RASULO: Your Honor, at this time, the
5 Government offers John Paul Osborn as an expert in forensic
6 document examination and handwriting analysis.

7 THE COURT: Once again, ladies and gentlemen, we
8 have an opinion witness. You are not bound by any opinion or
9 opinions expressed by this or any other opinion or, so-called,
10 expert witness.

11 I say this not because of this particular gentleman
12 or the one who preceded him. Any witness who's qualified to
13 give opinions here in court I would remind the jury that on
14 any issue of fact before you, you are the final judges of the
15 facts. So listen carefully, and I'll have some further
16 instructions for you at the conclusion of the trial.

17 Please proceed.

18 BY MS. RASULO:

19 Q Mr. Osborn, if you have a document that you wanted to
20 determine whether a particular person wrote it, what do you
21 do?

22 A Well, if there is bodies of writing or a body of writing
23 that is disputed or questioned or unknown and there is a
24 particular individual or individuals who might have prepared
25 that writing, the examination process begins with the

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1 examination and intercomparison of known to be genuine
2 writings of any given person, and the purpose of those
3 examinations is to study comparable features of the writings,
4 such as the individual letters, as prepared by that person, or
5 components of letters, general characteristics of writing,
6 like the height and size relationship between letters,
7 spacing, slant and that kind of general characteristic, and
8 then also the range of variation. You know, nobody can write
9 a complex body of writing exactly the same way twice, like a
10 signature exactly the same way twice. So it's important to
11 get an idea as to what normal range of variation exists
12 between and among examples of a person's writing.

13 Once that process is complete, examination of the
14 questioned writing much for the same purposes, to identify
15 features of the writing that are distinctive and others that
16 might be common, and then a comparison between the two, and
17 the comparison is performed in order to identify what
18 similarities are present, what differences are present, and
19 then to gauge the significance of each.

20 MS. RASULO: Permission to approach, your Honor.

21 THE COURT: Go right ahead.

22 Q The Government is showing you what's been marked for
23 identification as Government Exhibit 14 and Government Exhibit
24 32.

25 (Handing.)

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1 If you can review these exhibits, and let me know
2 when you're finished.

3 A (Perusing documents.)

4 Yes.

5 Q Mr. Osborn, do you recognize Government Exhibit 14?

6 A Yes. Government Exhibit 14 is a ten-page questionnaire
7 containing what was submitted to me as known writing of the
8 defendant prepared in the normal course of business.

9 Q And Government Exhibit 32?

10 A Government Exhibit 32 is a series of 20 pages of writing
11 prepared specifically at request, appearing on forms that I
12 created and also bearing writing of the defendant written
13 specifically at request.

14 MS. RASULO: Your Honor, at this time, the
15 Government offers Government Exhibit 14 and Government Exhibit
16 32 into evidence subject to connection.

17 MR. BACHNER: No objection.

18 THE COURT: Received, 14 and 32 now in evidence.

19 (Government's Exhibits 14 and 32 were received in
20 evidence.)

21 BY MS. RASULO:

22 Q I'm handing you what's in evidence excerpts from
23 Government Exhibit 16A, 16F, 16J, 16N, 16P, 16Q and 16R.

24 (Handing.)

25 Do you recognize these excerpts from these exhibits?

1 A Yes.

2 Q What are they?

3 A They are a series of ten prescriptions which were
4 submitted to me as bearing certain entries that were
5 questioned or unknown and which were the focus of my
6 examinations.

7 Q What examination were you asked to perform?

8 A I was very simply asked to take a look on nine of those
9 ten prescriptions at certain particular entries that appear on
10 the prescriptions, certain handwritten notes that appear on
11 the prescriptions, compare them with the writing submitted to
12 me as prepared by the defendant, and determine, if possible,
13 whether or not the defendant prepared one or more of them.

14 In addition, I was asked to look at one particular
15 exhibit, that exhibit is the one that is marked GX16P, in
16 order to determine on that particular item whether or not
17 there was any evidence that the prescription had been, in any
18 way, shape or form, altered.

19 Q Were you able to reach a conclusion with respect to these
20 exhibits?

21 A Yes.

22 Q What was your conclusion?

23 A In each case, the nine prescriptions and the specific
24 handwritten entries that were questioned or unknown I was able
25 to identify and observe sufficient evidence to render a

J. Osborn - Rasulo / Direct

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1 determination that the defendant to be identified as the
2 writer of each one.

3 Additionally, with respect to the one exhibit that I
4 was asked to examine with respect to the possibility of
5 alteration, there were two specific portions of that
6 prescription which, in my opinion, were altered.

7 Q Have you prepared illustrations in connection with your
8 opinions?

9 A Yes.

10 Q Do you have those with you?

11 A Yes, I do.

12 MS. RASULO: Permission to approach, your Honor.

13 THE COURT: Yes, ma'am.

14 Q These are the illustrations that you've prepared, Mr.
15 Osborn.

16 (Handing.)

17 A Copies of those illustrations, yes.

18 MS. RASULO: Your Honor, at this time, the
19 Government moves Exhibit 43 into evidence.

20 MR. BACHNER: No objection, your Honor.

21 THE COURT: Government Exhibit 43 now in evidence.

22 (Government's Exhibit 43 was received in evidence.)

23 MS. RASULO: Your Honor, permission to publish to
24 the jury.

25 THE COURT: Yes, ma'am.

J. Osborn - Rasulo / Direct

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1 MS. RASULO: Mr. Osborn has provided copies to
2 supply to the jury, if there's no objection to passing that
3 out.

4 THE COURT: None at all. Ms. Mulqueen will assist
5 you in passing them out.

6 (The above-referred to exhibit was published to the
7 jury.)

8 BY MS. RASULO:

9 Q Mr. Osborn, this is your first illustration?

10 A Yes, it is.

11 Q Would you like to explain this illustration for the jury?

12 A This illustration and the one that immediately follows is
13 referred to just generally as a handwriting comparison chart.
14 It is simply a composite of examples of words from the
15 questioned entries appearing on several of the prescriptions,
16 as indicated by the captions, and then a series of examples
17 from the writings prepared specifically at request.

18 And I apologize, I've forgotten that exhibit number.

19 Q The exemplar? There's Government Exhibit 32 and
20 Government Exhibit 14.

21 A I believe it was 32, the request specimens.

22 Q Correct.

23 A And the purpose of the illustration is simply to allow a
24 much more convenient comparison between known and questioned
25 samples of writing. This is not the basis for the conclusion,

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1 but simply an illustration prepared to show some of the
2 consistencies which formed the basis for that conclusion.

3 The two other illustrations that appear within this
4 group of four specifically focus on GX16P, which is the
5 prescription I was asked to look at in terms of the potential
6 for evidence of alteration, and that particular or those two
7 particular charts reproduce GX16P, along with enlarged
8 portions of those exhibits, to help me explain why I found
9 that the prescription had been altered.

10 Q And that's illustration number two?

11 A Well, they both go to the same -- to the same purpose.

12 Q Illustrations two and three?

13 A That's correct.

14 Q With respect to illustration two and three, the Robert
15 Duarte prescription, is that this prescription here, 16P
16 (indicating)?

17 A Yes, I believe it is. A little bit difficult to see from
18 this distance, but yes, that's the one.

19 Q I'm putting it up on the Elmo.

20 Okay. It's this one here.

21 (The above-referred to exhibit was published to the
22 jury.)

23 Q Would you like to explain these illustrations?

24 A I just did, I think.

25 Q I'm sorry.

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1 Do you have additional illustrations that you'd like
2 to explain for the jury?

3 A No. These were the illustrations that were prepared to
4 let me discuss the basis for my conclusions.

5 Q Then what about what you prepared to discuss for the
6 basis of your conclusions?

7 A Are you asking me what is the basis for my conclusion?

8 Q Yes. Thank you.

9 THE WITNESS: Your Honor, if I could have permission
10 to step down and stand in front of the overhead?

11 THE COURT: Sure.

12 (Witness steps down from the witness stand.)

13 A With respect to each one of the prescriptions that I was
14 asked to examine, there were a total of ten. There were
15 particular portions of those prescriptions that I was asked to
16 examine in particular, and I will just quickly go through.
17 These are copies of each one of those prescriptions, and
18 highlighted on each is the area in which I was asked to take a
19 look at the writing.

20 This is GX16A.

21 16F.

22 (The above-referred to exhibit was published to the
23 jury.)

24 A The portion, by the way, I should mention, which appears
25 on the right of these copies is the backside, the reverse of

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1 each one of the prescriptions.

2 GX16F.

3 (The above-referred to exhibit was published to the
4 jury.)

5 A And this particular portion right in here (indicating).

6 GX16J.

7 (The above-referred to exhibit was published to the
8 jury.)

9 A GX16J again. This is a second prescription under that
10 particular exhibit number.

11 GX16N.

12 (The above-referred to exhibit was published to the
13 jury.)

14 A And another prescription with the exhibit number GX16N.
15 Again, this is the reverse of the prescription. That's the
16 writing I was asked to look at.

17 GX16P.

18 (The above-referred to exhibit was published to the
19 jury.)

20 A Now, this particular prescription is the one I was asked
21 to look at with respect to potential alteration, and there are
22 two arrows indicating the areas that I focused on, which is
23 the eight in 80 milligrams and the label.

24 GX16Q.

25 (The above-referred to exhibit was published to the

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1 jury.)

2 A Simply the name "Nancy Edwards" which appears at the top
3 of that prescription on its face.

4 And finally, GX16R.

5 (The above-referred to exhibit was published to the
6 jury.)

7 A There was writing in question both on the face as well as
8 on the reverse.

9 In performing these examinations, basically, what I
10 found were multiple examples of rather distinctive handwriting
11 characteristics, and when I say distinctive, I mean particular
12 characteristics of writing which tend to deviate from normal
13 copybook style. The current common style of writing taught in
14 the United States in schools today is called D'Nealian. It's
15 a simplified form of cursive writing. So many people have
16 characteristics of D'Nealian writing that they learned to
17 write during the course of the past, let's say, decade. The
18 deviations from that form of writing and from the individual
19 letters and the way that they're formed that people develop
20 over time, particularly now because today in the United States
21 children don't continue their education with regard to
22 penmanship much past the third grade. People develop
23 distinctive characteristics in their writing sooner, and the
24 same is true in many foreign countries.

25 So what we're looking for is those distinctive

1 characteristics. Now, the characteristics of what I'll point
2 out to you are examples of what I saw are by no, way, shape or
3 form unique. None of them are unique to this particular
4 person and may be shared by other people, but what is unique
5 is the combination of those distinctive characteristics that
6 are found throughout the writing.

7 Now, if you take a look at the questioned writing at
8 the top of the first illustration, which is from GX16A, and
9 the Q numbers are the numbers that appear in my report, there
10 are some characteristics in particular with regard to, let's
11 say, the word "allergies." The formation of upper-case letter
12 A; the use of the crossbar of the A to connect to the
13 following letter L; the somewhat distinctive formation of the
14 lower-case letter R that you'll see here and here
15 (indicating), which is a single-stemmed R. And a single
16 stemmed R, which is an R that's similar to the hand printed
17 form of the lower-case letter R is not distinctive in and of
18 it is, but in this particular formation, they have a rather
19 lengthy curved matter of forming that particular letter that
20 is distinctive and deviates from copybook style. G-I
21 combination; the finish of the S are some other examples. And
22 you'll note in this series of words "allergies" that appear,
23 each of them are different from one another, as they should
24 be, because they are each different examples of writing by one
25 person prepared even at the same sitting which contain natural

1 variation of that particular writer. And the questioned
2 example of the word "allergy" is also different, but none of
3 the differences rise to the level of significant or
4 fundamental differences, and there are numerous highly
5 distinctive and significant similarities to the point where,
6 in this particular instance, the writing could be identified
7 as that of the defendant who prepared each one of the examples
8 to the right.

9 "Tomorrow", use of a rather large crossbar at the
10 top of the T; again the R's; the finishing W; things like this
11 R-O combination are rather distinctive.

12 This is all from GX16A.

13 We take a look at words from GX16J. Use of the,
14 again, that particular R that I discussed before.

15 Now, take a look at the hand printed form of the
16 letter F and among these examples of the word "for". They're
17 all written in cursive. So in order to explain what we have
18 to do is take a look at other words that contain letters F
19 because, apparently, this individual has that particular
20 variation. And you will note in examples that I will show you
21 that -- or other examples that appear within both the
22 prescriptions as well as the known writing, that this
23 individual does use that form of the letter F, even in writing
24 cursive.

25 The word "common"; "always"; things like the

1 connection between the O and the X in OxyContin; use of a
2 disconnected hand printed form of the lowercase letter T.

3 Going to the second chart, which is illustration 1B
4 from Exhibit GX16J.

5 (The above-referred to exhibit was published to the
6 jury.)

7 A The B-O combination; use of a, more or less, hand printed
8 form of the lowercase letter S and the connection from the O,
9 as in the word "dose."

10 The word "terribly" with a rather large crossbar
11 again on the T; the R combinations that appear within that
12 particular word.

13 "Illness", separated I-L-L combination, followed by
14 cursive written N-E-S-S.

15 The word "agent", combination again with the A
16 crossbar being used to connect to the following letter;
17 formation of the E-N that appears.

18 "Nobody", the B formation, as well as the formation
19 of the lowercase letter D.

20 The word "was", the connection between the W and the
21 A. And you'll note that particular A formation, which is the,
22 more or less, hand printed formation, does not appear, but is
23 a variation that occurs within this person's writing on
24 occasion, as exemplified by this final example.

25 The word "desert", D formation; again the R; the

1 intersection of the R and the crossbar of the T.

2 The word "hand", single-stemmed formation of the
3 staff of the H; the formation of the D.

4 The formation of the K in "kept".

5 Several letters within the word "gave"; the G
6 formation; A-V-E combination.

7 Use of the printed form S in "small" and the A-L-L
8 combination.

9 Now, these are some examples of distinctive
10 characteristics found and variations found within this
11 person's writing, and there are numerous others from each of
12 the prescriptions and each of the notations. The handwriting
13 specimens that were obtained specifically at request were of
14 value because they included multiple examples of a number of
15 words that appeared throughout all of these various
16 inscriptions on the prescriptions that were presented for
17 examination.

18 Again, the conclusion, identifying the defendant as
19 being the writer, is a conclusion which is based on the lack
20 of any significant or fundamental differences and the presence
21 of numerous significant similarities, things that were highly
22 consistent and, in combination, represent the unique pattern
23 of writing prepared by a single person, by one person.

24 With regard to illustration number two, which
25 focuses on GX16P.

1 (The above-referred to exhibit was published to the
2 jury.)

3 A I was asked to take a look at this for evidence of
4 alteration, and the formation of the eight in 80 milligrams
5 appears to have been prepared with a single writing
6 instrument. The color of the ink, both in this reproduction
7 as well as in the original, is quite consistent.

8 One of the things that we do when we perform
9 examinations for purposes of a determination of alteration is
10 take a look at any variance in the writing. The way that we
11 do that is we look at writing ink with a combination of
12 infrared and ultraviolet light sources and infrared and
13 colored filters, and what these things do is because of the
14 chemical components of the inks and because their reaction to
15 those filtering and lighting sources will vary, oftentimes ink
16 that to the naked eye looks the same will react differently
17 under those particular circumstances.

18 So if we take a look at this particular entry
19 wherein we're applying 365 nanometers of infrared illumination
20 and 365 nanometers of infrared filtration in combination, what
21 we see is that the S formation disappears from view almost.
22 You can just barely see it just faintly, and the rest of the
23 numerical figure remains in, what we call, a luminescent form
24 of reaction. And basically, it kind of shines like a neon
25 light, and this clearly and unanswerably demonstrates that

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1 these two inks are different or have different components. To
2 the naked eye, they look the same, but when you use these
3 filtration and lighting source, it's possible to make that
4 differentiation.

5 So based on this examination, it's my opinion that
6 the original entry was ten milligrams and it was changed to 80
7 milligrams. And there's a little bit more close view of that
8 particular numerical figure. Again, you can just barely see
9 the remains of the portion that was added that changed the ten
10 to an eight.

11 If you take a look at the last illustration, number
12 three.

13 (The above-referred to exhibit was published to the
14 jury.)

15 A Again, it's the same prescription, GX16P. There is a
16 label at the very bottom of that particular prescription.
17 Well, when I received this particular document, the label was
18 partly torn up or partly removed from the surface of the
19 paper, and there was clearly another label underneath, and in
20 picking the label up underneath, the original label reading 80
21 milligrams and using a little bit of transmitted light, light
22 exchange through the underneath of the paper, it was very
23 obvious that the underlying label read ten milligrams. So the
24 label that appeared on the top of this prescription read 80.
25 The underlying label had ten milligrams.

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1 Again, the physical evidence which, you know, is
2 clearly present, the change in the numerical figure is a
3 little bit more difficult to see because to the naked eye,
4 again, it looks quite similar. If you look very closely at
5 the eight in its original form, it looks a little odd, but
6 clearly without the benefit of a little extracurricular
7 lighting activity, it's difficult to see that that change had
8 occurred.

9 (The witness returns to the witness stand.)

10 MS. RASULO: Your Honor, the Government would like
11 to mark the illustration that Mr. Osborn used with respect to
12 his finding as Government Exhibit 44.

13 THE COURT: Okay.

14 MS. RASULO: Admitted into evidence?

15 MR. BACHNER: No objection, your Honor.

16 THE COURT: All right.

17 (Government's Exhibit 44 was received in evidence.)

18 BY MS. RASULO:

19 Q Mr. Osborn, do you have a copy of your report with you?

20 A Yes.

21 Q And that report includes your findings?

22 A Yes.

23 MS. RASULO: Your Honor, the Government would like
24 to mark Mr. Osborn's report as Government Exhibit 45 and admit
25 it into evidence.

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1 THE COURT: Mr. Bachner?

2 MR. BACHNER: No objection.

3 THE COURT: 45 in evidence.

4 (Government's Exhibit 45 was received in evidence.)

5 MS. RASULO: Thank you, Mr. Osborn. I have no
6 further questions at this time.

7 THE COURT: Mr. Bachner, any questions?

8 MR. BACHNER: Just a few, your Honor.

9 CROSS-EXAMINATION

10 BY MR. BACHNER:

11 Q Good afternoon, Mr. Osborn. How are you, sir?

12 A Good afternoon.

13 Q Mr. Osborn, other than the exemplars of Mr. Hossaini,
14 were you asked by the Government to do an exemplar on any
15 patient?

16 A No.

17 Q Any doctor?

18 A No.

19 Q Now, sir, regarding the item that you spoke about that
20 indicated an alteration of the eight and the ten. Do you
21 remember that, the 80 to the ten?

22 A Yes.

23 Q Ten to the 80, actually.

24 Is it fair to say that you were asked to determine
25 whether or not the change in the eight to the ten was

1 consistent with Mr. Hossaini's handwriting; is that correct?

2 A No. It would not be possible for me to make a
3 determination with regard to the individual who made the
4 change, only that the change had occurred.

5 Q Well, sir, was one of your conclusions that in connection
6 with the -- on Q13, sir. Do you have your report in front of
7 you?

8 A No, it was taken from me.

9 Q Well, it's in evidence. So I'm going to read this.

10 It says: "Q13. The hand-printed numerical figure
11 80 milligrams was originally 10 milligrams in the drug dosage
12 amount. No determination can be rendered with respect to who
13 made the change."

14 A That's correct.

15 Q So were you asked to see whether or not the change was
16 made by the defendant?

17 A I was asked to perform examinations of the writing on all
18 the prescriptions, but advised the Government almost
19 immediately when this information was discovered that I would
20 not be able to make a determination with regard to that
21 change. It's just simply not enough writing there to make
22 that determination.

23 Q Very good.

24 MR. BACHNER: Thank you, sir.

25 THE COURT: Anything else?

1 MS. RASULO: No, your Honor.

2 THE COURT: Mr. Osborn, thank you. You may step
3 down.

4 THE WITNESS: Thank you, your Honor.

5 (The witness leaves the witness stand.)

6 THE COURT: Next witness.

7 MS. RASULO: The Government calls Michael Genchi to
8 the stand.

9 (Michael Genchi enters the courtroom and takes the
10 witness stand.)

11 THE COURT: Sir, stand and face me and raise your
12 right hand.

13

14 MICHAEL GENCHI,

15 called by the Government, having been first duly
16 sworn, was examined and testified as follows:

17

18 THE COURT: Please be seated.

19 Tell us your name, and spell it for the court
20 reporter.

21 THE WITNESS: My name is Michael Genchi, last name
22 G-E-N-C-H-I.

23 THE COURT: Please inquire.

24

25

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1 DIRECT EXAMINATION

2 BY MS. RASULO:

3 Q Mr. Genchi, by whom are you employed?

4 A CVS Pharmacy.

5 Q What is your job title?

6 A I'm regional director of acquisitions.

7 Q How long have you been employed by CVS?

8 A Since 1995.

9 Q Where do you live?

10 A I live in Rockville Centre, New York.

11 Q Where do you work?

12 A I work, my territory is from Massachusetts to Virginia,
13 and I work out of an office in East Northport, Long Island.

14 Q As the regional director of pharmacy acquisitions, what
15 are your job responsibilities?

16 A My job responsibilities include sourcing independent
17 pharmacy acquisitions and doing market research.

18 Q When you say sourcing independent pharmacy acquisitions,
19 what do you mean by that?

20 A I buy, you know, independent mom-and-pop drug stores that
21 are retiring, losing their lease, and we roll them over into
22 CVS's.

23 Q How long have you been employed in that position?

24 A Six years.

25 Q Can you describe your educational background for the

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1 jury?

2 A High school graduate, Oceanside, New York, 1979. Went to
3 St. John's University, graduated with a pharmacy -- BS in
4 pharmacy in 1984.

5 Q Are you familiar with the pharmacy called Family
6 Chemists?

7 A Yes.

8 Q How are you familiar with Family Chemists?

9 A Family Chemists, I was contacted by a pharmacy supervisor
10 in March 1st of '07 who gave me a lead and said that the store
11 was available.

12 MR. BACHNER: Objection, your Honor.

13 THE COURT: I'll permit that.

14 Go ahead.

15 Could I hear the answer back?

16 (The requested portion of the record was read back
17 by the Official Court Reporter.)

18 THE COURT: I'll permit that. Go ahead.

19 BY MS. RASULO:

20 Q That was on March 1st of 2007?

21 A Yes.

22 Q Once you were notified, what was your next step?

23 A My next step was to contact the owner, which I did, and,
24 you know, just get the circumstances of, you know, why the
25 store was available, et cetera, and, you know, look to

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1 purchase it.

2 Q When did you contact him?

3 A I believe I contacted him probably that same day.

4 Q And that would be March 1st of 2007?

5 A Yes.

6 Q Now, were you contacted by a broker first with respect to
7 Family Chemists?

8 A No.

9 Q When you contacted Mr. Hossaini, what did he say?

10 A He said that he had until March 15th to renew his lease
11 and that he did not renew his UFT contract and that he also
12 had received a grant to do some research for his Ph.D.

13 Q Did Mr. Hossaini say anything to you about a DEA visit?

14 A No.

15 Q How did Mr. Hossaini seem to you on the phone?

16 A He seemed okay.

17 Q What was your reaction to his proposal with respect to
18 his store?

19 A Well, I met with him, and it was something that we could
20 do. We had two stores in the neighborhood, and it was
21 something that I could move forward with.

22 THE COURT: This is on behalf of CVS?

23 THE WITNESS: Correct.

24 THE COURT: Okay.

25

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1 BY MS. RASULO:

2 Q When did you meet with Mr. Hossaini?

3 A It was probably a day or two later.

4 Q Can you describe your negotiations with him?

5 A Yeah. I met with him and I established how many
6 prescriptions he did and looked at his inventory and reached
7 out to the operators at CVS something that they wanted to do
8 and just moved forward.

9 Q How long did it take for you to finalize negotiations?

10 A We closed that deal on March 14th.

11 Q So from March 1st was your initial contact, the deal was
12 closed on March 14th?

13 A Correct.

14 Q Can you explain the terms of the deal?

15 A The terms of the deal were his inventory, which it was a
16 ballpark of about \$150,000 in total inventory, and I told him
17 that I would like him to come to work for CVS just to meet and
18 greet or transition the business for a period of 30 days, and
19 I paid him \$5,000 to do that, in addition to purchasing his
20 inventory, which was about \$150,000.

21 Q Do you believe the terms of the deal were favorable to
22 CVS?

23 A Yes.

24 Q How so?

25 A Well, it was an inventory-only deal in the fact that I

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1 only had to pay for the inventory, and in lieu of purchasing
2 an inventory, he signed that two-year two-mile non-compete
3 which says that he wouldn't open up or work in any other
4 competitor within time frame of two years or two miles, and he
5 agreed to do the meet-and-greet, which is important in
6 transitioning the business, for 30 days.

7 Q Do you commonly do inventory-only purchases?

8 A Several times a year, yes.

9 Q Out of how many deals that you do in a year?

10 A I'd say five or six out of 30 to 40 deals, but it varies
11 year to year.

12 Q That's approximately in a year?

13 A Approximately.

14 Q You said Mr. Hossaini signed paperwork.

15 Was there paperwork associated with this sale?

16 A Yes. We have a purchase and sale agreement issued by --
17 drawn up by CVS legal department, and that was executed.

18 MS. RASULO: Permission to approach, your Honor.

19 THE COURT: Yes, ma'am.

20 MS. RASULO: I'm showing the witness what's been
21 marked for identification as Government Exhibit 29.

22 Q (Hanging.)

23 Mr. Genchi, if you can review Government Exhibit 29,
24 and let me know when you're finished.

25 A (Perusing document.)

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1 Okay.

2 Q Mr. Genchi, do you recognize Government Exhibit 29?

3 A Yes.

4 Q How do you recognize it?

5 A That's our standard purchase and sale agreement and
6 transfer paperwork that we normally do with every acquisition.

7 MS. RASULO: Your Honor, at this time, the
8 Government moves Exhibit 29 into evidence.

9 MR. BACHNER: No objection, your Honor.

10 THE COURT: 29 in evidence.

11 (Government's Exhibit 29 was received in evidence.)

12 MS. RASULO: Permission to publish.

13 THE COURT: Go ahead.

14 (The above-referred to exhibit was published to the
15 jury.)

16 BY MS. RASULO:

17 Q I'm showing you the first page of Government Exhibit 29.

18 Can you explain this to the jury, the first page?

19 Is this the asset purchase and sale agreement?

20 A Yes, it is.

21 Q Do you see it's dated March 6th, 2007?

22 A Yes.

23 Q Do you understand why it's dated March 6th, 2007?

24 You said you had closed on the 14th.

25 A Well, yeah. I made contact on the 1st. After I make

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1 contact, I have to do my paperwork and send it up to
2 corporate, which takes a couple of days for them to, you know,
3 put the paperwork together and send it out to the owner.

4 Q So in terms of the deal itself, the terms of the deal,
5 when were those finalized prior to the paperwork going into
6 place?

7 A Between the 1st and the 6th.

8 Q Turning to the last page of the asset purchase and sale
9 agreement.

10 Is that Mr. Hossaini's signature, to your knowledge?

11 A I would assume so, yes.

12 Q And it's also signed by representatives from CVS?

13 A Yes.

14 Q I'm going to show you a document within Government
15 Exhibit 29. It's entitled "Closing Statement Purchase and
16 Sale Agreement".

17 Can you explain this document to the jury?

18 A Yes. This document represents total amount of inventory
19 that we purchased from the store. We have an inventory
20 company that comes in and counts the inventory, both pharmacy
21 and front store inventory.

22 In this case, there was \$126,697.16 in RX inventory
23 and 29,000, roughly \$29,000 in front store inventory.

24 Q With respect to the RX inventory, would that be inventory
25 that CVS would have to purchase in the future at some point if

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1 it didn't purchase it from Family Chemists?

2 A Well, the inventory that we purchase at CVS is usually to
3 satisfy the customers at CVS, and when we buy a store, owners
4 generally have no way to get rid of inventory. So we purchase
5 it, and with that inventory, we generally service the patients
6 that come over from the acquisition.

7 Q I'm showing you one last portion of Government Exhibit
8 29.

9 (The above-referred to exhibit was published to the
10 jury.)

11 Q Do you recognize this document?

12 A Yes.

13 Q What is it?

14 A A copy of the 2005 tax return from Family Chemists.

15 Q Did you request this tax return?

16 A Yes.

17 Q Why is that?

18 A It's part of my due diligence. I usually ask for tax
19 returns, RX summary printouts, just to do my due diligence.

20 MS. RASULO: Your Honor, I have no further questions
21 for this witness.

22 THE COURT: Mr. Bachner.

23 CROSS-EXAMINATION

24 BY MR. BACHNER:

25 Q How are you, Mr. Genchi?

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1 A Very well. Thank you.

2 Q Mr. Genchi, at the time that you learned that Mr.
3 Hossaini was seeking to sell his pharmacy in March of '07, you
4 indicated that he had some lease issue; is that correct?

5 A That's correct.

6 Q Did he tell you anything about his license for the
7 pharmacy expiring?

8 A I don't think so, no. It was just the lease. He had
9 until the 15th of March to renew his lease.

10 Q Did you get a look at his registration for his pharmacy
11 as part of the sale?

12 A No, I didn't look at the registration.

13 Q Now, sir, Mr. Hossaini told you that --

14 MR. BACHNER: Withdrawn.

15 Q Mr. Hossaini told you that he wanted to work on his
16 Ph.D.; is that correct?

17 A That's correct.

18 Q And did he tell you that he intended to do research?

19 A Yes.

20 Q And did he also have conversations with either you
21 directly or with members of CVS, that you became aware of as a
22 part of the sale, in which Mr. Hossaini was negotiating with
23 CVS to purchase a pill counting machine that he had been
24 working on? Are you aware of that?

25 A There was talk about a pill counting machine, and I

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1 thought that's why he was going overseas, to work on that, as
2 a business venture.

3 Q Were you shown the document related to the pill counting
4 machine that Mr. Hossaini was working on?

5 A I don't recall.

6 Q Sir, as far as inventory is concerned, how old do --
7 there must be inventory CVS would not purchase because it's
8 too old; is that correct?

9 A Yes.

10 Q Just to get to the question, sir, for controlled
11 Substances II and III, how close to expiration do those pills
12 have to be before CVS would purchase them as part of their
13 inventory?

14 A They have to be within date by 90 days. So if they were
15 going to expire within the next 90 days, they would be
16 considered -- we wouldn't pay for them. We would have to take
17 them and not pay for them, but take that merchandise.

18 Q If Mr. Hossaini had merchandise that was older than three
19 months that he had in stock at Family Chemists, would that
20 necessarily had to have been made known to you as part of the
21 sale if he knew it was older than three months if he knew you
22 wouldn't be purchasing it?

23 A Narcotics or controlled substances?

24 Q Controlled substances, yes.

25 A Generally, I tell the owners that -- I tell them that

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1 anything that -- they have the time to return it, you know,
2 prior to us selling it, but if we come there and it's a
3 controlled substance merchandise and it's going to expire
4 within 90 days, I will take it and process the return, but not
5 pay him for that merchandise. Anything else that's within
6 date we would purchase. Any other prescription medication
7 that is a non-controlled substance that is going to be expired
8 within 90 days we do not take.

9 Q So Mr. Hossaini would have had the right to return
10 whatever controlled substances he had on his own that was
11 older than 90 days; is that correct?

12 A That's correct.

13 MR. BACHNER: Thank you, very much.

14 THE COURT: I'm sorry. I just want to make sure I
15 understand.

16 Controlled substances now, if they were going to
17 expire within 90 days, would you take them and return them and
18 not pay Mr. Hossaini?

19 THE WITNESS: That's correct.

20 THE COURT: Would Mr. Hossaini have the option of
21 retaining that merchandise?

22 THE WITNESS: Prior to -- no, he wouldn't have the
23 option.

24 Prior to me walking in the store, if the merchandise
25 is not there, obviously I wouldn't take it. I would assume

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1 that it's returned, but if it's there and we do the
2 transaction on that day and he turns in his license, he has no
3 way to return it.

4 THE COURT: I see.

5 THE WITNESS: So as a good faith effort, we take it
6 and we return it. We don't pay for it, but we do handle the
7 return on our end.

8 BY MR. BACHNER:

9 Q Just following up on what the Court said.

10 Inventory that you counted as part of your
11 transaction would not have included pills that were going to
12 expire within the 90-day period that Mr. Hossaini would have
13 returned prior to the transaction being completed?

14 A Correct.

15 MR. BACHNER: Thank you, very much.

16 THE COURT: Anything else, Miss Rasulo?

17 MS. RASULO: No, your Honor.

18 THE COURT: Thank you, very much, sir. You may step
19 down.

20 (The witness leaves the witness stand.)

21 THE COURT: Next witness.

22 MS. RASULO: The Government calls Jennifer Zaltsman
23 to the stand.

24 (Jennifer Zaltsman enters the courtroom and takes
25 the witness stand.)

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1 COURTROOM DEPUTY: I'm going to ask you, please, to
2 raise your right hand.

3

4 JENNIFER ZALTSMAN,

5 called by the Government, having been first duly
6 sworn, was examined and testified as follows:

7

8 COURTROOM DEPUTY: State and spell your name for the
9 record.

10 THE WITNESS: Jennifer Zaltsman, J-E-N-N-I-F-E-R.

11 THE COURT: Go ahead.

12 DIRECT EXAMINATION

13 BY MS. RASULO:

14 Q Good afternoon.

15 Miss Zaltsman, do you intend to invoke your Fifth
16 Amendment right against self-incrimination if questioned
17 further?

18 A No.

19 Q How old are you?

20 A Twenty-four.

21 Q What area do you live in?

22 A Forest Hills, Queens.

23 Q Can you describe your education?

24 A I went to college for four years, and I got a bachelor's
25 in legal studies.

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1 Sorry. I'm nervous.

2 THE COURT: Just relax.

3 Q Take your time.

4 A Okay.

5 THE COURT: She's not as ferocious as she looks.

6 THE WITNESS: I know. She's a nice lady.

7 THE COURT: Go ahead.

8 BY MS. RASULO:

9 Q Are you working now?

10 A No. I'm looking for work at the moment.

11 Q Where did you go to college?

12 A St. John's University in Queens.

13 Q Where did you go to high school?

14 A Kew Forest School in Queens as well, private school.

15 Q Have you ever used drugs before?

16 A Yes.

17 Q What kinds of drugs have you used?

18 A I've tried almost every drug. Like I've tried cocaine.

19 I've been addicted to heroin, Vicodin, other prescription
20 medications.

21 Q You said that you became addicted?

22 A Yes.

23 Q Which drugs?

24 A I was addicted to Vicodin and heroin as well.

25 Q When were you addicted to Vicodin?

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1 A From 2005 to 2006.

2 Q How did you become addicted to Vicodin?

3 A I started taking the medication on the street, like
4 someone had given me a couple of them, and then I started just
5 buying them from certain dealers, and I don't know really what
6 it was, and I didn't know it was addictive, but I started
7 taking it, and I realized that I couldn't stop, so.

8 Q When did you become addicted to heroin?

9 A In 2007. Yeah, mid-2006.

10 Q Can you describe your Vicodin addiction to the jury?
11 How did it affect you?

12 A It, like, it affected my schooling. It affected my
13 family life. Like my family didn't want to have anything to
14 do with me. I lost all my friends, burned all the bridges I
15 could burn, and it was just really bad all around.

16 Q And how did you feel physically?

17 A Physically, like, sick all the time. Like my stomach
18 wasn't properly working. I couldn't, you know, eat normal
19 food. Like I was always vomiting and just, like, I couldn't
20 live without it, so. I was always sick either from it or
21 because I couldn't get it.

22 Q At the height of your addiction, how many Vicodin pills
23 were you taking a day?

24 A Like over 60, more than 60.

25 THE COURT: Six-oh?

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1 THE WITNESS: Six-zero.

2 BY MS. RASULO:

3 Q Do you still take Vicodin?

4 A No.

5 Q Are you on any drugs?

6 A No. I'm on a methadone program though legally.

7 Q How long have you been on the methadone program?

8 A July 2007.

9 Q Have you been arrested before?

10 A Yes, twice.

11 Q Can you describe your first arrest?

12 A The first arrest I was with four people in the vehicle,
13 and we drove to a dope spot, and we had, like, Vicodins which
14 were our own in the car. So there were narcotics officers at
15 the spot, I guess sweeping the area, and they -- they pulled
16 us over -- well, we were pulled over. So they searched the
17 vehicle, and they arrested everybody in the car, so. There
18 was one person who was outside the vehicle, and all three of
19 us went in for the Vicodin in the car.

20 Q What happened with the charges with respect to you?

21 A My boyfriend had taken the charge on himself. Like he
22 took blame for it. So he had gotten a misdemeanor in the end.

23 Q What happened to you?

24 A I didn't get anything.

25 Q What about did you have another arrest?

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1 A Yeah, a second time.

2 Q When was that?

3 A And that was in May 2006.

4 Q Can you describe that arrest?

5 A Okay. I was in a pharmacy getting a refill on somebody
6 else's -- someone's name, and the police officers came into
7 the pharmacy, and they said that it was fraudulent, and they
8 arrested me inside the pharmacy and the people who were in the
9 car waiting for me as well.

10 Q So you went to fill a prescription in someone else's
11 name?

12 A Yeah. Well, right, a refill.

13 Q A refill?

14 A On an original prescription.

15 Q That you had filled?

16 A No, that someone else, a male had filled.

17 Q And you were arrested?

18 A Yeah.

19 Q What happened with respect to the charges when you were
20 arrested?

21 A What charges?

22 Q Well, what happened to you, ultimately, after your
23 arrest?

24 A Well, I had gotten a lawyer, and they had dropped the
25 case to a violation, and they said that if I were to be

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1 arrested a third time that I would go to jail, be
2 incarcerated.

3 Q Were you served with a subpoena to testify today?

4 A No.

5 Q Have you ever passed fake or stolen prescriptions?

6 A Yes.

7 Q How many in total?

8 A I would say more than -- more than, like, 20.

9 Q Where did you get the prescriptions from?

10 A I would get it from somebody who would buy them from
11 someone or would take them from a doctor.

12 Q And who is that person?

13 A Eric Freud.

14 Q Have you yourself ever stolen prescriptions?

15 A No.

16 Q Have you ever been prescribed painkillers by a doctor?

17 A Never.

18 Q Where would you fill your prescriptions?

19 A Family Chemists.

20 Q Who is the pharmacist who filled your prescriptions at
21 Family Chemists?

22 A Well, I knew the name as Michael. That's it. No last
23 name.

24 Q How long were you going to Family Chemists?

25 A For over a year, I would say.

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1 Q Do you know approximately when you were going there?

2 A From 2005 to 2006.

3 Q And why did you go to Family Chemists?

4 A Well, because we knew that the prescription itself
5 wouldn't be verified. That's what I heard.

6 MR. BACHNER: Objection, your Honor.

7 THE COURT: Sustained.

8 Disregard that, ladies and gentlemen.

9 MR. BACHNER: Move to strike that.

10 THE COURT: Strike it from the record.

11 THE WITNESS: Sorry.

12 THE COURT: That's all right. Just relax.

13 Next question, please.

14 BY MS. RASULO:

15 Q When you filled prescriptions at Family Chemists, to your
16 knowledge, were they ever verified or if they called the
17 doctors?

18 A No.

19 Q Do you know if Eric Freud filled prescriptions there?

20 A Yes.

21 Q Do you know what Eric Freud would do with the pills that
22 he filled?

23 A He sold them.

24 Q Did you fill your prescriptions under your name?

25 A No.

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1 Q What name did you use?

2 A Heather Parisi.

3 Q Would your boyfriend also fill prescriptions there that
4 had been stolen?

5 A Yes.

6 MR. BACHNER: Objection, your Honor.

7 Q To your knowledge?

8 MR. BACHNER: Foundation.

9 A To my knowledge?

10 Q To your knowledge.

11 A Yes.

12 Q To your knowledge, do you know if your boyfriend filled
13 prescriptions at Family Chemists?

14 MR. BACHNER: Objection, your Honor. I don't know
15 what "to your knowledge" means.

16 THE COURT: How do you know that?

17 THE WITNESS: I was with him in the car.

18 THE COURT: Go ahead.

19 BY MS. RASULO:

20 Q Do you know what name your boyfriend filled the
21 prescriptions under?

22 A Michael Parisi.

23 Q How often would you fill prescriptions at Family
24 Chemists?

25 A Every month.

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1 Q Did you ever call the pharmacy?

2 A Yes.

3 Q And why would you do that?

4 A To ask if I could come in, if I could bring a
5 prescription in.

6 Q And who would you speak to?

7 A A Michael.

8 Q How much would you pay for the prescriptions?

9 A Around \$150.

10 Q For how much?

11 A Give or take a couple, like ten dollars.

12 A hundred twenty.

13 Q And how would you pay?

14 A Cash.

15 Q Always in cash?

16 A Always.

17 Q Did you have insurance at the time?

18 A No. Well, I was under my mom's insurance.

19 Q Did you use your mom's insurance?

20 A No. Well, it wasn't the same -- I used an alias, so.

21 Q Were you working at the time?

22 A Yes. At that time, yeah, I was. Yes, I was.

23 Q How were you getting the cash to pay for your
24 prescriptions?

25 A I would get them from either my parents if I didn't have

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1 the money or from my boyfriend. He had worked at the time as
2 well, so.

3 Q What was your relationship like with Mike?

4 A It was just there to get what I had to get and I would
5 leave. So there wasn't really a relationship outside of the
6 pharmacy.

7 Q Did he say anything to you?

8 A Well, he was just, like, nice to me and, you know, he
9 would say just, you know, we should get a cup of coffee, you
10 know, just to say it, but we never did anything like that.

11 Q Did he say anything to you about your Vicodin use?

12 A Yes, he said I should try to start to get off of them,
13 that I need to get help.

14 Q I'm showing you what's been marked and offered into
15 evidence already as Government Exhibit 16V.

16 A Okay.

17 Q (Handing.)

18 Take a look, and let me know when you're finished.

19 A (Perusing document.)

20 THE COURT: I take it you've seen these before
21 coming into court?

22 THE WITNESS: Yes, I did.

23 A Okay.

24 Q Do you recognize Government Exhibit 16V?

25 A Yes, I do.

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1 Q How do you recognize them?

2 A I see that they are the prescriptions that I had used at
3 Family Chemists, and one of them was a receipt that I would
4 receive every time I filled a prescription.

5 MS. RASULO: Permission to publish, your Honor.

6 THE COURT: Go right ahead.

7 (The above-referred to exhibit was published to the
8 jury.)

9 Q Is this the receipt you're talking about?

10 A Yes.

11 Q So this isn't a prescription that you brought in?

12 A No.

13 Q This is the receipt that you would get once you filled
14 the prescription?

15 A Yes.

16 Q It contains like recommendations about using the
17 prescription?

18 A Yes, that's it.

19 Q Just to show you one of these prescriptions, the name you
20 used, Heather Parisi.

21 (The above-referred to exhibit was published to the
22 jury.)

23 A Yes.

24 Q I'm going to show you another one.

25 (The above-referred to exhibit was published to the

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1 jury.)

2 Q Again, do you recognize this prescription as one of the
3 ones that you filled at Family Chemists?

4 A Yes.

5 Q Dr. Chandrasekhar, is that a doctor that you ever went
6 to?

7 A No.

8 Q It appears to say, "Called MD on Saturday. No answer."

9 You were never a patient of Dr. Chandrasekhar; is
10 that correct?

11 A No, I wasn't.

12 THE COURT: Do you know who filled that out, who did
13 the writing?

14 THE WITNESS: I did.

15 THE COURT: You did?

16 THE WITNESS: Yeah, I wrote them all.

17 THE COURT: You wrote them all, okay.

18 THE WITNESS: And I had to change -- like I would
19 change my writing so it wouldn't be under the radar.

20 THE COURT: Under the radar, okay.

21 THE WITNESS: Obviously not.

22 BY MS. RASULO:

23 Q Now, after Mike told you that you should get help, that
24 you should get off these things, did you continue to fill
25 prescriptions there?

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1 A Yes.

2 Q And you continued to fill prescriptions there for cash?

3 A Yes.

4 Q Were there any other pharmacists at Family Chemists?

5 A No. There was someone else there more than, like, once
6 or twice was Michael's sister. That's who I knew her as.

7 Q Did she ever fill prescriptions for you?

8 A Yeah, once or twice, I would say.

9 Q Did Mike ever front you pills or give you pills in
10 advance of you getting a prescription?

11 MR. BACHNER: Objection to the leading, your Honor.

12 THE COURT: I'll permit it. Go ahead.

13 A One time he had given me medication without a
14 prescription, but he said that he would give it to me if I
15 would bring it in afterwards, and I never brought it in.

16 Q How many pills did he give you?

17 A A hundred twenty.

18 Q And you paid for those?

19 A Yes.

20 Q Did Mike ever give you pills for free?

21 A No.

22 MS. RASULO: I have no further questions.

23 THE COURT: Mr. Bachner.

24 MR. BACHNER: Thanks, judge.

25

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1 CROSS-EXAMINATION

2 BY MR. BACHNER:

3 Q Good afternoon, Miss Zaltsman.

4 A Hi.

5 Q Miss Zaltsman, you're testifying here without any grant
6 of immunity; is that correct?

7 A I was told that I would receive immunity.

8 Q So you were told that you would receive immunity?

9 A Yes.

10 Q Do you recall that you've now given testimony without any
11 protection?

12 THE COURT: I think it's apparent the witness was
13 likely confused at the outset of her examination.

14 You were asked at the outset of your examination
15 whether you were testifying under grant of immunity.

16 THE WITNESS: Right.

17 THE COURT: Do you remember what you answered?

18 THE WITNESS: I said I was told that I would be
19 given immunity.

20 THE COURT: You actually said no.

21 THE WITNESS: Oh, no.

22 THE COURT: Go ahead.

23 So as you sit there now, you believe that you're
24 immunized for your testimony?

25 THE WITNESS: Yes.

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1 THE COURT: What do you understand that to mean?

2 THE WITNESS: Well, I was told, I spoke to my lawyer
3 and my lawyer had said that --

4 THE COURT: You don't have to tell us what your
5 lawyer said.

6 THE WITNESS: That I would just tell the truth and
7 do my part and help the state's case and then I would be
8 immune to any prosecution.

9 THE COURT: Okay. Go ahead.

10 MR. BACHNER: Your Honor, could we have a sidebar?

11 THE COURT: Sure.

12 (Sidebar.)

13 (Continued on next page.)
14
15
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Sidebar

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1 (Side-bar conference held on the record out of the
2 hearing of the jury.)

3 MR. BACHNER: In all fairness to the witness, I
4 don't know if she wants to speak to her lawyer and see what
5 her position is.

6 THE COURT: I already signed the immunity order. I
7 think it was obvious she was confused.

8 MR. BACHNER: I thought, actually, she was not going
9 to be prosecuted and she was given a break.

10 THE COURT: She's not going to be prosecuted.

11 MR. BACHNER: No, I'm sorry. I thought she was
12 testifying without any protection at all.

13 MS. RASULO: No. Your Honor, I can make clear on
14 the record that she stands to be immunized. We have the
15 order.

16 THE COURT: Now what?

17 MR. BACHNER: Okay. I guess maybe we should put
18 that in.

19 MS. RASULO: Would you like me to make a record?

20 MR. BACHNER: Maybe we could get the Government to
21 reopen the record and ask her about her immunity.

22 (Sidebar end.)

23 (Continued on following page.)

24

25

1 (In open court.)

2 THE COURT: Mr. Bachner has graciously conceded the
3 podium for a minute to allow the Government to reopen its
4 direct examination.

5 MS. RASULO: Your Honor, the Government, at this
6 time, would like to offer Government Exhibit 46 into evidence.
7 It's an immunity order for Miss Zaltsman.

8 THE COURT: Any objection to that, Mr. Bachner?

9 MR. BACHNER: No, your Honor.

10 THE COURT: Received subject to the Court's
11 inspection, Government's 46 in evidence.

12 (Government's Exhibit 46 was received in evidence.)

13 MS. RASULO: Thank you, your Honor. We have no
14 further questions.

15 THE COURT: Just so that it's clear, when you
16 testified, when you answered no when you were asked initially
17 by the Government whether you were testifying under a grant of
18 immunity, I take it you were mistaken or you didn't understand
19 the question?

20 THE WITNESS: I didn't -- I was mistaken.

21 THE COURT: As you sit there now, your belief is
22 that you are protected from any possible prosecution as long
23 as you tell the truth?

24 THE WITNESS: Yes. Sorry.

25 THE COURT: All right. Mr. Bachner, your witness.

J. Zaltsman - Bachner / Cross

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1 MR. BACHNER: Thank you.

2 BY MR. BACHNER:

3 Q Miss Zaltsman, just so we're clear now, it's your
4 understanding, is it not, that you cannot be prosecuted for
5 any of the criminal conduct that you've told this jury that
6 you've engaged in; is that correct?

7 A Yes, that's correct.

8 Q So in connection with the filling out of any stolen
9 prescriptions --

10 A Right.

11 Q -- you cannot be charged with any criminal conduct; is
12 that right?

13 A That's right.

14 Q Are you aware, based upon conversations with counsel,
15 that the filling of forged prescriptions is a felony in the
16 State of New York? You're aware of that?

17 A Yes, I'm aware.

18 Q And are you aware that it is a D, like David, felony?

19 A Yes.

20 Q Are you aware that you have a potential jail sentence of
21 seven years in jail on each forged prescription?

22 A Yes.

23 MS. RASULO: Objection, your Honor.

24 THE COURT: No, I'll permit it.

25 A I'm -- no, I'm not aware.

J. Zaltsman - Bachner / Cross

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1 Q You're aware though that these are extremely serious
2 offenses that you've been immunized for; is that right?

3 A Yes, I'm aware of that.

4 Q And you've told this jury that you're not going to be
5 prosecuted for any of those offenses so long as you tell the
6 truth; is that correct?

7 A Yes.

8 Q And is it fair to say that it's your understanding that
9 the person who determines whether you've told the truth is the
10 Government; is that correct?

11 A Yes.

12 Q And if the Government determines that you've not been
13 truthful with them, you would be in violation of your immunity
14 order; is that right?

15 A That's right.

16 Q And you could be charged with perjury?

17 A Yes.

18 Q And obstruction of justice?

19 A Yes.

20 Q So is it fair to say that your function here today, in
21 order to maintain your immunity order, is to make sure that
22 the Government is pleased with your answers?

23 MS. RASULO: Objection, your Honor.

24 THE COURT: Sustained as to form.

25 A I --

J. Zaltsman - Bachner / Cross

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1 THE COURT: No, no. Wait for the next question.

2 THE WITNESS: Sorry.

3 BY MR. BACHNER:

4 Q Is it your understanding that in order for your immunity
5 order to remain intact, the Government has to be convinced
6 that you're being truthful?

7 A I don't -- I am being truthful.

8 Q And is it your understanding that the Government has to
9 make that determination?

10 A Yes.

11 Q Now, have you been truthful on all of your testimony here
12 today?

13 A Yes, I have been.

14 Q Who is Eric Freud?

15 A Eric Freud is somebody that I used to buy pills from.

16 Q And who is Mr., I think, Terry, George Terry?

17 A Robert Terry?

18 Q Robert Terry.

19 A That was my ex-boyfriend at the time.

20 Q Was Robert Terry involved with you in any criminal
21 conduct?

22 A Yes.

23 Q Do you know whether or not Robert Terry has been
24 prosecuted in connection with any of this conduct?

25 A Any of the prescriptions?

J. Zaltsman - Bachner / Cross

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1 Q Yes.

2 A No, not from -- no, I haven't.

3 Q When was the last time you spoke with Eric Freud?

4 A Last -- the second time that I was arrested, I would say
5 May '06, he called me once, and we got into an argument, and
6 then after that, we didn't speak again. I changed my number.

7 Q He threatened you, didn't he?

8 A Yes, he made some threatening comments, but.

9 Q What did he say?

10 A He said that I'm in a lot of trouble and that, you know,
11 that he knows where I live and that just stupid things that I
12 can't really recall, but just something to that effect. He
13 was just threatening me. He knew how to press -- push my
14 buttons to scare me.

15 Q And Eric Freud, the gentleman who made these threats to
16 you, he was one of the people who got arrested with you on May
17 6th; is that correct?

18 A No, he was arrested afterwards.

19 Q Did he tell you that he blamed you for his arrest?

20 A Yes.

21 Q Now, Robert Terry, your former boyfriend, he stole
22 prescription pads from doctors' offices; isn't that correct?

23 A From one doctor's office.

24 Q A Dr. Pantig, where you worked?

25 A Yes.

J. Zaltsman - Bachner / Cross

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1 Q And you told that to the Government; is that correct?

2 A Yes.

3 Q Again, as you sit here today, when is the last time you
4 spoke to Robert Terry?

5 A He goes to my program. So I spoke to him three days ago.

6 Q To your knowledge, has Mr. Terry been charged with any
7 criminal conduct in connection with his involvement?

8 A I have no idea of that, nothing.

9 Q Did you pass fraudulent prescriptions at pharmacies other
10 than Family Chemists?

11 A Yes.

12 Q Where else did you pass prescriptions?

13 A I don't know the name of where I was arrested, but it was
14 there, and then there was another place on Kissena Boulevard.
15 I don't know the name of that either.

16 Q Was your conduct to do these things directed by Mr.
17 Freud?

18 A Well, yes. He told me about it, and he, yeah, he would
19 give me something in exchange for going inside.

20 Q Is it fair to say that Mr. Freud took advantage of your
21 addiction?

22 A Yes.

23 Q Did you do this for quite a while for Mr. Freud?

24 A Yeah.

25 Q You knew that Mr. Freud was dispensing pills that he was

J. Zaltsman - Bachner / Cross

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1 purchasing; isn't that right?

2 A Yes, just because I saw it with my two eyes, so.

3 Q I think you told this jury that you never heard Mr.
4 Hossaini call a doctor; is that correct?

5 A Yes.

6 Q Is it fair to say that Mr. Hossaini would fill the
7 prescriptions in the back area of the pharmacy?

8 A Yes.

9 Q Is it also fair to say that you could not overhear what
10 was being said in the back area of the pharmacy?

11 A The phone was in the front area.

12 Q Do you know if there was a phone in the back area?

13 A The phone -- I can't say that I do know that.

14 Q Because you've never been there?

15 A In the back, no, but the phone that I saw was in the
16 front.

17 Q Miss Zaltsman, is it fair to say that you never told Mr.
18 Hossaini that the prescriptions that you were filling were
19 fraudulent?

20 A Yes, I never told him, no.

21 Q And is it also fair to say that it was your belief that
22 Mr. Hossaini, when you began going into the pharmacy, that he
23 believed your prescriptions were legitimate?

24 A I can't say for sure, but he probably did. I don't know
25 if he called. So if he didn't call, he, obviously, believed

1 that they were real.

2 Q Is it fair to say, ma'am, when you were interviewed by
3 the -- do you remember being interviewed by the Drug
4 Enforcement Administration and by the U.S. Attorney's office
5 prior to your testimony?

6 A Yes.

7 Q Do you recall ever telling them that you believe that
8 Hossaini probably thought the prescriptions were legitimate?

9 A I said that at the beginning, he probably thought they
10 were legitimate, but I don't know what he thought towards the
11 end.

12 Q And you don't know what he thought towards the end; is
13 that correct?

14 A I can't say for sure. He never told me.

15 Q When Mr. Freud would fill prescriptions at the pharmacy,
16 is it fair to say that he would fill prescriptions from
17 doctors that really gave him prescriptions?

18 A I think he did that, too. I think he gave him real
19 prescriptions.

20 Q Just so we understand, Mr. Freud would come into the
21 pharmacy and fill legitimate prescriptions?

22 A I think he filled both legitimate and -- and fraudulent
23 ones.

24 Q It's fair to say though that Mr. Hossaini, when Mr. Freud
25 came in, was filling, for a period of time, legitimate

1 prescriptions for Mr. Freud?

2 THE COURT: She thinks.

3 A I don't know.

4 THE COURT: She thinks. She doesn't know.

5 Q Well, you told the jury that, at some time, you were in
6 the car with Mr. Freud when he filled fraudulent
7 prescriptions.

8 Were you ever in the car with him when he filled
9 legitimate prescriptions?

10 A I didn't know if he -- he had fraudulent ones and
11 legitimate ones. So I didn't know which ones were real
12 because he went to different doctors, so I don't know.

13 Q And what Mr. Freud would do was he would actually go to,
14 I believe there was a Dr. Fineman; is that correct? Do you
15 know that name?

16 A No.

17 Q Do you know any of the legitimate doctors that Mr. Freud
18 would lie to to get scripts?

19 A I think he went to a doctor in Great Neck, but it was for
20 Percocets.

21 Q And what Mr. Freud would do is fill, if you know from
22 your observations, would fill legitimate prescriptions, and
23 then over the course of time, he would then begin to fill
24 illegitimate prescriptions; is that right?

25 A Yes.

J. Zaltsman - Bachner / Cross

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1 Q Is it also fair to say that when you came into Family
2 Chemists, your relationship to Mr. Freud was not a secret to
3 Mr. Hossaini; isn't that right?

4 A I don't think he knew our relationship.

5 Q Wasn't there a point in time that Mr. Freud was actually
6 in the pharmacy when you were filling a prescription?

7 A Yes, one time.

8 Q And he was seated on the couch; isn't that right?

9 A No, he was walking out. He was standing.

10 Q He was walking out?

11 A Yeah.

12 Q You said that you were being charged how much for 120
13 pills?

14 A I would say \$150, give or take like ten dollars, maybe
15 145.

16 Q Do you know what the price of -- and this is for Vicodin?

17 A Do I know what the price is?

18 Q Is this for Vicodin?

19 A Yes, just only for Vicodin.

20 Q If you went into CVS today and wanted to pay cash for 120
21 pills, do you know what the charge would be?

22 A No.

23 Q Do you know whether or not Mr. Hossaini was actually
24 charging you, essentially, what you would be charged at any
25 pharmacy?

J. Zaltsman - Bachner / Cross

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1 A I guess other pharmacies charge different prices.
2 Everyone's different.

3 Q You also told this jury that you had changed the writing
4 on the scripts; is that correct?

5 A Yes.

6 Q And that was to trick the pharmacist; isn't that right?

7 A That was --

8 Q In other words, you didn't want to come in with
9 prescriptions from --

10 A I didn't want to have the same handwriting from different
11 doctors.

12 Q You didn't want handwriting, the same handwriting --

13 A Yeah.

14 Q -- on different prescriptions for different doctors
15 because that would be an indication to the pharmacist that
16 something may be up; is that right?

17 A Yes. That's what I felt.

18 Q So the reason you did that when you went into Family
19 Chemists is in order to trick the pharmacist into believing
20 that the prescriptions were from different doctors; is that
21 correct?

22 A Yes, but I don't know if it worked.

23 Q That was your intention, was it not?

24 A It was my intention, yes.

25 MR. BACHNER: One second, your Honor, if I might.

J. Zaltsman - Bachner / Cross

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1 (Pause in the proceedings.)

2 MR. BACHNER: Nothing else, your Honor.

3 THE COURT: Anything of this witness?

4 MS. RASULO: Nothing further, your Honor.

5 THE COURT: Thank you, madam. You may step down.

6 THE WITNESS: Thank you.

7 (Witness leaves the witness stand.)

8 THE COURT: Next witness.

9 MS. RASULO: The Government calls Diversion
10 Investigator Ginger Jaramillo to the stand.

11 (Diversion Investigator Ginger Jaramillo takes the
12 witness stand.)

13 COURTROOM DEPUTY: Please raise your right hand.

14

15 GINGER JARAMILLO,

16 called by the Government, having been first duly
17 sworn, was examined and testified as follows:

18

19 COURTROOM DEPUTY: Please have a seat.

20 State and spell your name for the record.

21 THE WITNESS: First name Ginger, last name
22 Jaramillo, J-A-R-A-M-I-L-L-O.

23 THE COURT: Please proceed.

24

25

G. Jaramillo - Rasulo / Direct

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1 DIRECT EXAMINATION

2 BY MS. RASULO:

3 Q What do you do for a living?

4 A I'm a diversion investigator with DEA.

5 Q How long have you been a diversion investigator with the
6 DEA?

7 A Approximately twelve years.

8 Q What are your responsibilities?

9 A As a diversion investigator, I inspect and regulate all
10 DEA registrants.

11 Q When you say DEA registrants, what do you mean by that?

12 A Manufacturers, distributors, narcotic treatment programs,
13 pharmacies, importers, exporters of controlled substances and
14 List 1 chemicals.

15 Q When you say controlled substances, does that include
16 oxycodone and hydrocodone?

17 A Yes.

18 Q Have you received training regarding controlled
19 substances?

20 A Yes, I have. I received approximately eleven weeks of
21 training.

22 Q Can you describe that training?

23 A Again, it was training -- training was for the inspection
24 and regulation of all DEA registrants that would show us how
25 diversion would be -- excuse me. How diversion would be with

G. Jaramillo - Rasulo / Direct

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1 the legal handlers of controlled substance into the illicit
2 market. Excuse me.

3 Q And your training included controlled substances?

4 A Yes.

5 Q Now, are you familiar with a pharmacy called Family
6 Chemists?

7 A Yes, I am.

8 Q How are you familiar?

9 A I am the lead investigator since August of '05.

10 Q As part of your responsibilities as the investigator,
11 that includes site visits to Family Chemists?

12 A Yes.

13 Q When was your last site visit?

14 A It was February 28th, 2007.

15 Q So between August of 2005 and February 28th of 2007, you
16 conducted site visits at Family Chemists?

17 A Yes, I did.

18 Q Did you go to Family Chemists on August 5th of 2005?

19 A Yes, I did.

20 MS. RASULO: Permission to approach, your Honor.

21 THE COURT: Yes, ma'am.

22 Q Showing you what's been marked for identification as
23 Government Exhibit 38.

24 (Hanging.)

25 Take a look at that, and let me know when you're

G. Jaramillo - Rasulo / Direct

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1 finished.

2 A (Perusing document.)

3 Q Do you recognize Government Exhibit 38?

4 A Yes, I do. It's an aerial.

5 Q How do you recognize it?

6 A Aerial view of the area where Family Chemists was located
7 in Bayside.

8 MS. RASULO: Your Honor, at this time, the
9 Government would like to move Exhibit 38 into evidence.

10 MR. BACHNER: No objection, your Honor.

11 THE COURT: Received.

12 (Government's Exhibit 38 was received in evidence.)

13 MS. RASULO: Permission to publish.

14 THE COURT: Go ahead.

15 (The above-referred to exhibit was published to the
16 jury.)

17 BY MS. RASULO:

18 Q Can you indicate for the jury where Family Chemists is on
19 this map? You can actually touch the screen.

20 A The top right-hand corner.

21 Q And that's where that green dot is where I'm pointing to
22 now?

23 A Yes. That's the parking lot.

24 Q And it's the top right-hand corner of Government Exhibit
25 38 -- it would actually be top left-hand corner.

G. Jaramillo - Rasulo / Direct

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1 You're saying that there's a parking lot there?

2 A Yes.

3 Q Family Chemists, does that take up the entire building?

4 A No. Family Chemists, where I'm looking at it, it's
5 second to last store on the right.

6 Q So there are multiple stores within --

7 A It's a small shopping center.

8 Q And it's set back behind a parking lot?

9 A Yes.

10 Q Where is it located? What is its address?

11 A 223-24 Union Turnpike.

12 Q And that's in Bayside?

13 A Bayside, New York, yes.

14 Q I'm going to show you what's already in evidence as
15 Government Exhibit 34.

16 (The above-referred to exhibit was published to the
17 jury.)

18 Q Do you recognize Government Exhibit 34?

19 A Yes. It's the front of the store.

20 Q Meaning Family Chemists?

21 A Yes, the pharmacy.

22 Q Now, when you were there on August 5th of 2005, what did
23 you do at Family Chemists?

24 A I went there with Special Agent Darren Argento to inspect
25 and review prescriptions.

G. Jaramillo - Rasulo / Direct

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1 Q When you were inspecting and reviewing prescriptions,
2 what were you looking for?

3 A Any signs of diversion with prescriptions that I was
4 going to inspect.

5 Q What kinds of signs of diversion were you looking for?

6 A Signs of diversion are any cash payments of
7 prescriptions, frequency of prescriptions written by the same
8 doctor, frequency of patient, patients that are coming to the
9 pharmacy, dates that are being filled if it's every day or
10 every other day or an abnormal amount of things.

11 Q Did Mr. Hossaini say anything to you when you were there?

12 A I did ask him if he verifies all the prescriptions, and
13 he did say that he does. In the event that he recognizes the
14 patient, he doesn't verify them.

15 Q Now, I'm showing you what's been marked for
16 identification as Government Exhibit 2.

17 Before I show it to you, once you inspected the
18 prescriptions, what was the result of your inspection?

19 A We continued to inspect the prescriptions and we noticed
20 an abnormal amount of prescriptions for Dr. Iandoli. Then
21 what happened --

22 MR. BACHNER: Objection to we, your Honor.

23 THE COURT: You're using the word "we".

24 Were you doing this by yourself, or were others with
25 you?

G. Jaramillo - Rasulo / Direct

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1 THE WITNESS: Well, I was with Special Agent Darren
2 Argento.

3 THE COURT: And you were working together?

4 THE WITNESS: Yes, sir.

5 THE COURT: So when you say "we," that's who you're
6 referring to?

7 THE WITNESS: Yes, sir.

8 THE COURT: Go ahead.

9 BY MS. RASULO:

10 Q So you were reviewing prescriptions, and did you notice
11 what was the result of your review?

12 A We noticed prescriptions for Dr. Iandoli.

13 Q What did you do as a result of noticing these
14 prescriptions for Dr. Iandoli?

15 A I requested a doctor's profile for Dr. Iandoli.

16 Q Was that provided to you?

17 A Yes, Mr. Hossaini gave me a copy.

18 Q I'm showing you what's been marked for identification as
19 Government Exhibit 2.

20 (Hanging.)

21 Let me know when you're finished.

22 A (Perusing document.)

23 THE COURT: You're familiar with that document?

24 THE WITNESS: Yes, sir.

25

G. Jaramillo - Rasulo / Direct

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1 BY MS. RASULO:

2 Q How are you familiar with Government Exhibit 2?

3 A This is a document that was printed from Mr. Hossaini's
4 computer, and it's the doctor profile for Dr. Iandoli.

5 MS. RASULO: Your Honor, at this time, the
6 Government moves Exhibit 2 into evidence.

7 MR. BACHNER: No objection, your Honor.

8 THE COURT: Received.

9 (Government's Exhibit 2 was received in evidence.)

10 MS. RASULO: Permission to publish.

11 THE COURT: Go ahead.

12 (The above-referred to exhibit was published to the
13 jury.)

14 BY MS. RASULO:

15 Q Can you explain this exhibit to the jury?

16 A Okay. It says on the top Family Chemists, Inc. It's a
17 doctor's profile for Dr. Iandoli for the period of January
18 1st, '05 through 8/8/05.

19 Q It's a multipage document?

20 A Yes, it's three pages, approximately, and if you're
21 reading it, it says prescriber's name, RX number, refill, fill
22 date, patient name, drug name, quantity, days, INS which is
23 insurance, and then price.

24 Q In your review of this -- what were your results of your
25 review of this document?

G. Jaramillo - Rasulo / Direct

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1 A As I said, I noticed numerous amounts of prescriptions
2 written for family members, for example, and also the dates of
3 the prescriptions being filled. There's a Sarah Robinson on
4 3/5 -- excuse me, on 3/3/05. She filled two prescriptions
5 each for -- one for 40 pills and another for 90 pills.

6 Q Is this where I'm pointing to here, 3/3, 3/3/05
7 (indicating)?

8 A Yes.

9 Q And you're saying that you were seeing, what was that?

10 A There were two prescriptions that were filled for this
11 person.

12 THE COURT: For what, the same person?

13 THE WITNESS: For hydrocodone. It was the same
14 person that filled two prescriptions that same day.

15 THE COURT: So that's something you took note of?

16 THE WITNESS: Yes, sir.

17 BY MS. RASULO:

18 Q And anything else, generally, with respect to the patient
19 profile?

20 A As I continued to review it, I just noted, again, there
21 were cash payments, the family members, Vecchio, Robinson, the
22 names were repetitious and, again, they appear to be
23 excessive.

24 Q What is your basis for saying they appear to be
25 excessive?

G. Jaramillo - Rasulo / Direct

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1 A Again, those are signs of diversion that we look for when
2 we go to pharmacies. We review the prescriptions, again if
3 they're written by the same doctor, the frequency of the
4 patient, when the prescriptions were filled and, again, it's
5 for painkiller hydrocodone.

6 Q Did Mr. Hossaini say anything else to you on that day?

7 A No.

8 MS. RASULO: Your Honor, this may actually be a good
9 breaking point.

10 THE COURT: You're moving on to something else?

11 MS. RASULO: Yes, we are.

12 THE COURT: All right, folks. We'll call it a day,
13 and enjoy your early break. We're going to spoil you.

14 Some time tomorrow afternoon I'll give you a report
15 on our progress, which I can tell you, generally, is quite
16 good, just so you have some sense as to where we stand.

17 We resume at 9:30 in the morning. Do not discuss
18 the case. Thank you for arriving on time this morning, and
19 we'll see you in the morning.

20 (Witness leaves the witness stand.)

21 COURTROOM DEPUTY: All rise.

22 (Jury exits the courtroom.)

23

24 (Continued on following page.)

25

Proceedings

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1 THE COURT: I wanted to report to you that as of
2 about an hour ago, our missing juror, juror number 8, has
3 neither shown up, nor have we heard from her, nor have we been
4 able to reach her. Just to round out that tale. If I have
5 any more information, I'll pass it on to you.

6 What do you have left after Ms. Jaramillo?

7 MS. RASULO: At most, two more witnesses, your
8 Honor. So the Government intends to rest before lunch
9 tomorrow.

10 THE COURT: Mr. Bachner?

11 MR. BACHNER: Your Honor, I believe that we would be
12 prepared tomorrow to put some testimony on, but we would
13 probably not be able to conclude that, and we would go into
14 Friday, and I think by Friday we could be finished. So there
15 won't be a whole waste of a day. I can try and get some
16 witnesses on for tomorrow.

17 THE COURT: I understand you've been caught off
18 guard.

19 All right. We'll see you in the morning.

20 MS. RASULO: Your Honor, I just want to note for the
21 record again that the Government did inform Mr. Bachner
22 yesterday that we did intend to rest our case either today or
23 tomorrow morning.

24 THE COURT: Nobody's pointing any fingers.

25 MS. RASULO: Thank you, judge.

Proceedings

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1 MR. BACHNER: She did.

2 THE COURT: Thank you and good night.

3

4 (Whereupon, the proceedings were adjourned to

5 November 13, 2008, at 9:30 a.m.)

6

7 * * *

8

9 CERTIFICATE OF REPORTER

10 I certify that the foregoing is a correct transcript of
11 the record of proceedings in the above-entitled matter.

12

13

14 Marie Foley, RPR, CRR
15 Official Court Reporter

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